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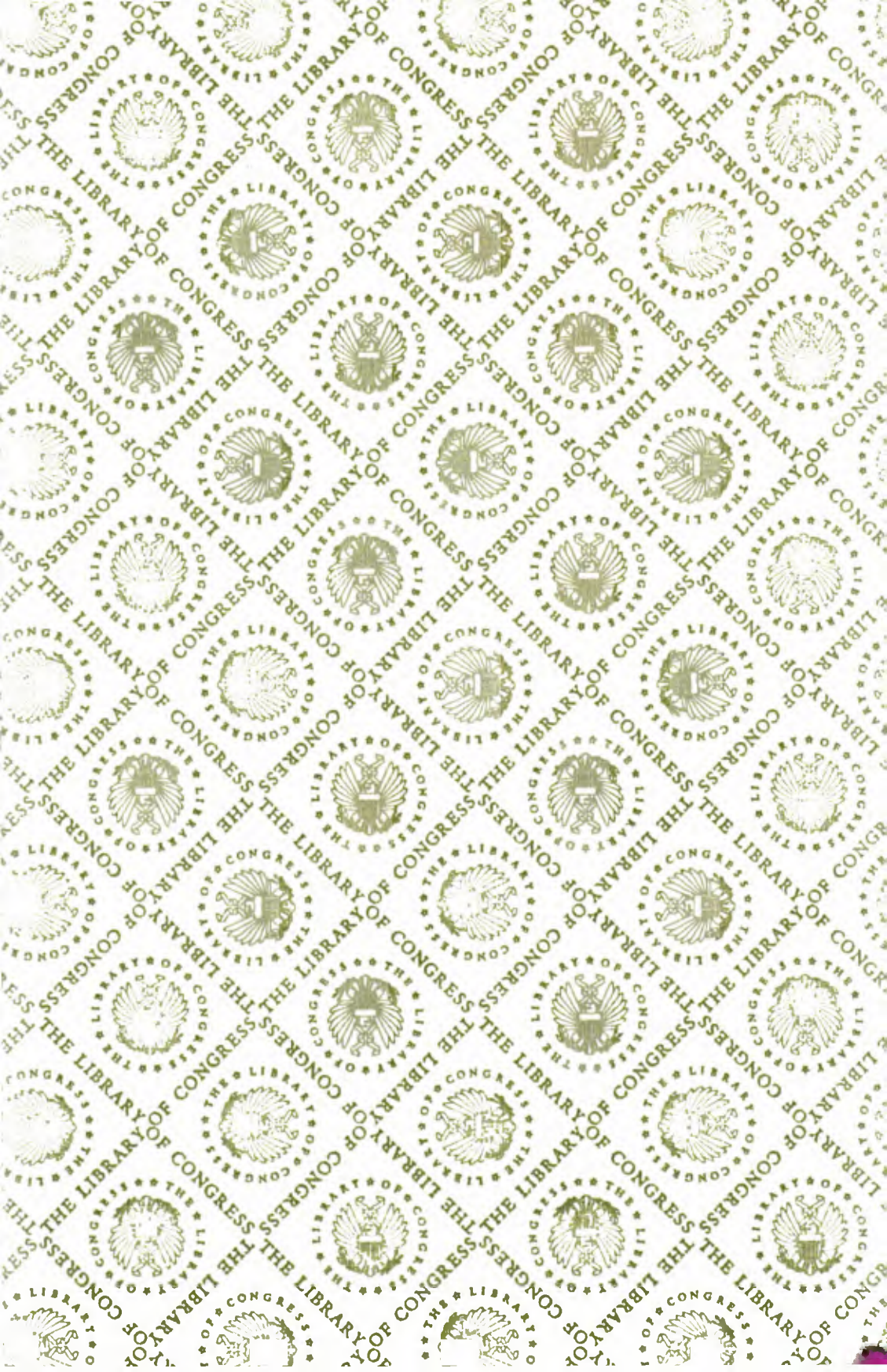
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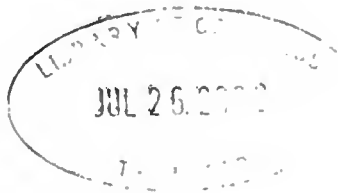
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SHOOT-DOWN OF THE BROTHERS TO THE RESCUE PLANES



HEARING BEFORE THE SUBCOMMITTEE ON CRIME OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS FIRST SESSION

—
JULY 15, 1999
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SHOOT-DOWN OF THE BROTHERS TO THE RESCUE PLANES

THURSDAY, JULY 15, 1999

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. Bill McCollum [chairman of the subcommittee] presiding.

Present: Representatives Bill McCollum, George W. Gekas, Asa Hutchinson, Robert C. Scott and Steven R. Rothman.

Also present: Representatives Ileana Ros-Lehtinen and Lincoln Diaz-Balart.

Staff present: Daniel J. Bryant, Chief Counsel; Rick Filkins, Counsel; Veronica Eligan, Staff Assistant; Bobby Vassar, Minority Counsel; and Anthony Cooper, DEA Detailee.

OPENING STATEMENT OF CHAIRMAN MCCOLLUM

Mr. MCCOLLUM. This hearing of the Subcommittee on Crime will come to order.

We are here today because on February 24, 1996, two unarmed civilian planes flying in international air space were blown out of the sky by Cuban MiGs, killing all four persons aboard, three of them Americans and the fourth a permanent U.S. Resident. Their names are Armando Alejandro, Jr., Carlos Costa, Mario de la Pena, and Pablo Morales.

We are here because that barbaric shootdown left families victimized and communities in mourning and shock and because the shootdown occurred without any warning and showed flagrant contempt for international law and basic human rights.

We are here because we, as Americans, are a Nation of freedom and independence, because we believe in liberty, and we certainly believe in human rights and human dignity.

We are here because on May 7, 1999, a Federal indictment was handed down in the Southern District of Florida charging 14 individuals, some of them Cuban spies, with a well-planned conspiracy called Operation Scorpion to shoot down the Brothers to the Rescue planes.

We are here because, as pointed out in the indictment itself, the fingerprints of the Cuban regime and more specifically, Fidel Castro himself, are all over those two planes whose pieces lie at the bottom of the Florida Straits. Indeed, the indictment explicitly describes Fidel Castro's role in various aspects of the operation.

And we are here because a growing number of people, after reviewing all the facts and the applicable law, believe that Fidel Castro himself should be indicted for his leadership role in the conspiracy resulting in the violent deaths of those four innocent men on February 24. And I agree with that conclusion. We are here because the body of evidence when evaluated in the light of the law overwhelmingly points to Castro's guilt.

The witnesses testifying today will present key pieces of that evidence. Some of the evidence cannot be presented because it might impede the ongoing criminal case in the Southern District of Florida. But there is other evidence that can be considered today. We will hear testimony from two defectors that describe how operations like the shoot down of the Brothers to the Rescue planes could not have occurred without Castro's extensive involvement and approval and how the Cuban Air Force actually practiced shooting down slow-moving planes like those flown by the brothers.

We will hear about top-level Cuban military officials asking U.S. Officials prior to the shootdown how the United States would react if Cuba shot down the Brothers' planes. And we will hear how the Cuban MiGs sought and were granted authorization to shoot down the Brothers' planes and how they were congratulated by Cuban ground control after the planes had been destroyed. And we will hear how one of the Cuban spies who infiltrated the Brothers to the Rescue operation and fled back to Cuba just hours before the planes were shot down was promoted within the Cuban military upon his return. And, remarkably, we will hear about Castro's own admission that he gave the order to the head of the Cuban Air Force to shoot down the planes.

We will also hear from an international law expert that Fidel Castro enjoys no immunity as a head of state from criminal prosecution by the United States when he is acting in violation of the law, as Castro did in this case by directing and approving the shootdown of civilian planes over international waters.

After a review of the evidence by the Subcommittee on Crime, I have come to the conclusion that Fidel Castro should be indicted for his role in the Brothers' shootdown. I believe that Fidel Castro belongs in the company of Mr. Milosevic, Mr. Pinochet and Mr. Noriega and is similarly deserving of international condemnation and accountability under the law. How many more crimes against humanity, against pro-democracy Cubans, against Cuban Americans will have to be committed before Fidel Castro is held accountable?

It is bad enough that Castro should be able to continue to perpetuate his regime in Cuba, causing untold suffering for Cubans, but it is an even greater affront to the United States when Fidel Castro is able to violate United States laws, snuff out the lives of our citizens, and get away with it. And as those who have for so long valued liberty and freedom, we watch in horror as this repressive regime continues down this destructive path.

I know we are all pleased with the Federal District Court's ruling that Cuba is civilly liable for the deaths of the Brothers to the Rescue pilots and that a substantial civil judgment is in order, and yet this administration has repeatedly blocked attempts to allow the families to recover any of that judgment from frozen Cuban as-

sets, and I think that directs the focus where it should be, on the administration. Even as the civil judgment can only be enforced if there is the will to do so on the part of this administration, so Fidel Castro can only be indicted if the administration has the will to hold him accountable. To bring Fidel Castro to justice will require leadership, and I hope this hearing helps to galvanize that leadership.

We will be joined this morning by a very special and accomplished panel of witnesses, and I look forward to their testimony because I believe, when it is concluded, that quite a few more people besides me will have the same opinion of what this administration should be doing and what it has failed to do.

Let me also note that today we are joined by two of our good friends and colleagues from Florida, Ms. Ros-Lehtinen and Mr. Diaz-Balart. Welcome to the committee today.

Given their strong interest in getting to the bottom of the incident, I want to ask unanimous consent that they both be permitted to make opening statements, if they wish, after the members have made opening statements. Is there any objection, Mr. Scott, if that would be allowed?

Mr. SCOTT. No, and if others want to join the panel, I assume that courtesy would be extended to them.

Mr. MCCOLLUM. That courtesy also would be extended in this case.

With that in mind, I yield to you, Mr. Scott, for any opening remarks you may have.

Mr. SCOTT. Thank you, Mr. Chairman.

I join you in the decrying the tragedy that gives rise to this oversight hearing, the downing of two Brothers to the Rescue planes on February 24, 1996, Cuban MiG fighter planes killing four people. It is my hope this hearing will shed new light on exactly what happened that day and whether the United States Government is doing all it should be doing in response to this unprecedented incident.

Certainly, shortly after the incident, the United States did take some action. President Clinton immediately condemned the downing. Further, then Secretary of State Warren Christopher called the attack on civilian planes a blatant violation of international law, and the United States called upon the United Nations Security Council to impose sanctions. As part of that effort, the Clinton administration produced documents made by radar readings showing that the two Cessnas were, in fact, over international waters when they were shot down.

On February 27, 1996, the administration secured a United Nations Security Council statement strongly deploring Cuba's action. The statement noted that international law requires that states must refrain from the use of weapons against civil aircraft in flight and must not endanger the lives of persons on board and the safety of the aircraft.

It is also requested—he also requested the International Civil Aviation Organization to investigate the incident and report its findings to the Security Council. They completed that investigation in late June, 1996, and concluded that the two planes were shot down over international waters.

Additionally, the President suspended all charter flights to Cuba indefinitely, imposed additional travel restrictions on Cuban diplomats in the United States, and limited visits by Cuban officials to the United States. Cuba's downing of the airplanes also resulted in the President working with Congress to secure passage of the Cuban Liberty and Democratic Solidarity Act, a congressional initiative imposing additional sanctions on Cuba.

More recently, in May of this year, an indictment was handed down in the United States District Court for the Southern District of Florida. The indictment names 14 individuals, involved in among other things, the downing of the BTTR planes.

While it would be helpful to hear from the Department of Justice regarding the indictment and its ongoing investigation into the incident, we certainly understand its policy of not discussing matters related to a pending case.

I also understand the Department of State and Department of Defense, when offered the opportunity to testify, declined in recognition of the Department of Justice's jurisdiction over this matter.

Nevertheless, I am hopeful that those who will testify today will shed light on this terrible tragedy. We need to understand what happened and whether the United States has done all it can do to address the impact of the tragedy on the victims and their families and bring those responsible to justice. Mr. Chairman, I look forward to working with you on this very important matter.

Mr. McCOLLUM. Thank you very, very much Mr. Scott.

Mr. Gekas, you are a member of the committee. You have joined us. Do you have any opening remarks?

Mr. GEKAS. Yes. I thank the chair.

I think it is prudent on the part of the chairman to invite his colleagues from Florida who are in the front line of the continuing confrontation with Cuba, because I believe their opening statements will truly be able to set the atmosphere for the entire hearing; and so I will yield the balance of my time so that we can get to their opening statements.

Mr. McCOLLUM. Thank you, Mr. Gekas.

Ms. Ros-Lehtinen, pursuant to the unanimous consent request allowing you to be our guest today, you are recognized for your opening statement.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman and members. Thank you for the opportunity to address you briefly today, and I thank our excellent panel of witnesses today. We look forward to hearing their testimony.

This tragedy to be addressed today focuses on a heinous attack on defenseless human beings by the Castro regime, and it addresses the response of the Clinton administration to the murder of three American citizens and one permanent resident. The tragedy gets to the extent of administration knowledge on developments prior and during the attack. We must delve into related policy initiatives which could indicate negligence in protecting the lives of innocent civilians.

On July 24, 1996, eight patriots boarded Brothers to the Rescue planes as they had done so many times before. They were embarking on a search of the Atlantic ocean and the Caribbean, combing

the waters for Cuban refugees who risk their lives in makeshift rafts in search of freedom and liberty.

On that fateful afternoon, the ruthless nature of the Castro regime was clearly revealed. Like vultures awaiting their prey, Cuban MiGs circled and hovered until they locked on to the frail Cessna planes. They shot down two of the planes carrying Carlos Costa, Armando Alejandro, Mario de la Pena, and Pablo Morales. Not satisfied with the deaths of these courageous men, they engaged in a hostile pursuit of the third aircraft carrying two of the witnesses who are with us today, and they are indeed fortunate to be alive.

We know who is ultimately responsible for this blatant act of aggression. Yet the Department of Justice has yet to conclude its investigation and issue indictments against the Castro regime for this criminal act.

There is no question that this was a hostile act with premeditated intent against civilians, and that NORAD and CJCS Rules of engagement permit defense of U.S. Lives and property in international air space in response to such acts. The explanations provided in the DOD Inspector General's investigation? Well, that there had been unexplained lapses in the communications chain.

We know that various U.S. Agencies knew the flight was compromised because one Pablo Roque, a Cuban agent who had worked for the FBI, had returned to Cuba on the day before and had provided detailed information to the regime concerning the February 24 Brothers to the Rescue mission. We know that the President's Cuba Advisor forwarded a memo to then Deputy National Security Advisor, Sandy Berger, including a shootdown in the scenarios and followed up with phone calls and e-mail messages to warn about this possibility.

It is public knowledge that there had been movement of high-ranking Cuban military officers to monitoring facilities and flight stations the day before the shootdown in an apparent preparation for the next day's mission.

Information is available which confirms that U.S. Radars picked up the Cuban MiGs early enough to scramble aircraft prior to the first Brothers to the Rescue plane being shot down. The MiGs were sighted by the U.S. At 3:01 p.m. The first plane was shot down at 3:22 p.m. That means a 21-minute lapse time.

Without battle station alert, the response time for U.S. Aircraft from Key West would be 11 minutes. On alert, it is estimated at 5 minutes. This indicates that, at the very least, there was ample time to prevent the deaths of the third and fourth victims and to provide protection to the last defenseless aircraft piloted by Jose Basulto who joins us today.

There would be no response, however, from the U.S. There would be no outrage or unconditional condemnation. In fact, administration officials would not even classify the attack as a terrorist act.

Serious questions remain about the U.S. Role and actions prior, during, and after the attack. I hope that this hearing will shed some light on these unresolved matters as we continue to seek justice for all who have been victimized by the Castro regime, especially on that fateful day in 1996.

Congressman Lincoln Diaz-Balart and I still have not had answers to the series of questions we had imposed to the Department of Justice many, many months ago.

And I would like to just read for emphasis some statements that Jose Basulto will make in his opening statement because I think they get at the heart of what is at stake here: Justice will only be served when all those directly and indirectly responsible for these murders are identified and brought to justice, says Jose Basulto. Why after 3 years do these crimes still remain unpunished and unresolved? U.S. Authorities are obliged and duty bound to act since three U.S. Citizens and a legal resident alien and a U.S. Flag airplane were involved.

Brothers to the Rescue asks this subcommittee to remove the main obstacle in finding the truth and justice in this tragedy, the politically motivated cover-up of the truth by the administration and its refusal to bring charges against Castro and all his polices, including those here who may have played a part in this tragedy.

And I thank you, Mr. Chairman, for your leadership on this issue. We thank you for bringing this to light, and we hope that this is not the last of the hearings, and we hope that we end this session with having the subpoena power to really get the answers to the questions that we still have not had answered.

Mr. McCOLLUM. Thank you, Ms. Ros-Lehtinen. Thank you for your perseverance for truth and justice in this matter, as well as that of my good friend and colleague, Mr. Diaz-Balart.

You are now recognized, Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Mr. Chairman. I thank the committee for its courtesy in allowing us to be part of your distinguished committee today.

Also, I would like to thank your staff for its hard work in the preparation of this committee for its initiative and your initiative, your leadership and inviting such a distinguished and knowledgeable panel that has also worked very hard in the preparation of this hearing, especially Mr. Fowler. And it is a privilege to be able to join you, Mr. Chairman, and the rest of the committee in welcoming them all.

Mr. Chairman, I was a prosecutor for some time some years back in South Florida, and I have never seen a more open-and-shut case. The Cuban dictator personally has admitted, as you stated in your opening statement, that he ordered these murders; and clearly there is—I mean, those statements are admissible. Certainly they are against his interest.

I think it perhaps would be wise at this point to listen to the words of the dictator himself just a few days after he ordered the murders in an interview that was published on March 11 of 1996 in Time magazine.

Present were the chairman of Time, Mr. Brack; Joelle Attinger, the chief of correspondence; and Cathy Booth, the Miami bureau chief. They interviewed the dictator; and they asked him, why did you take this action now?

And his answer, Castro's answer, and I quote, before, the Brothers helped rafters, but then they began in extremely serious terrorist actions against our country under the sponsorship of the Cuban American National Foundation in Miami. They harassed our air

force, violated our air space, dropped leaflets on our capital, and engaged in other constant acts of provocation.

On July 13, they dropped leaflets on Havana. It was a real provocation.

On January 9 and 13, they came back and dropped thousands of leaflets. In fact, people watched from malecon, the ocean front in Havana, as MiGs made warning passes against their planes.

We reported each and every violation to the United States in a diplomatic protest. We warned the United States time and again. We had been patient, but there are limits.

Question: What was the chain of command?

Castro: We discussed it with Raul—his brother. We gave the order to the head of the air force. They shot the planes down. They are professionals. They did what they believe is the right thing. These are all people we trust, but I take responsibility for what happened.

It is evident that there has not been an indictment against Mr. Castro because of a political decision. There has been an indictment against Mr. Milosevic despite the fact that there is no admission on the part of Mr. Milosevic on crimes against humanity. There was an indictment in the United States against Noriega, despite the fact that there was never an admission by Noriega that he engaged in drug trafficking. In this case, despite the admission of the tyrant, there is no indictment. It is a political decision not to indict.

The question must be asked why. Why is there no indictment of the Cuban dictator when the evidence is overwhelming and, in addition, there is an admission that he ordered the murders?

So it is a very serious question which leads to a series of other very serious questions, such as why wasn't the standard practice by the United States of intercepting threatening aircraft that leave Cuban air space when there is any possibility that the aircraft is threatening? There is a standard procedure that the Cuban aircraft are intercepted by United States fighter aircraft. Despite the fact that the United States multiple radars in the intelligence community, different agencies, were tracking the Brothers to the Rescue from the moment that they took off that day, why was standard practice not followed that day?

So, obviously, we are dealing with very serious issues which we will continue to delve into. We will not rest until the truth is able to rise to the surface. And in that context, Mr. Chairman, you are to be commended for continuing this very important process. Thank you very much.

Mr. McCOLLUM. Thank you very much, Mr. Diaz-Balart.

We are joined by Mr. Rothman. You are recognized for an opening statement.

Mr. ROTHMAN. Thank you, Mr. Chairman. I want to thank you and Ranking Member Scott for holding this very important oversight hearing today. No function of Congress is more important than the role that we as representatives play in safeguarding the lives of American citizens. To the extent we have gathered here today to learn how to ensure the safety of American citizens from despots and terrorists, I applaud you both.

When Fidel Castro directed his air force to shoot down two unarmed civilian aircraft in the Florida Straits on February 24, 1996, he was committing an act of state-sponsored terrorism. He was committing an act of state-sponsored terrorism that ultimately took the lives of three American citizens and one U.S. Resident.

On top of the horror of murdering these four individuals, on top of the pain and the suffering that he has forced upon these victims' families and on top of the cold-blooded nature of his order to blast these unarmed planes out of the sky, Fidel Castro is also guilty of thinking that he can get away with this crime. He is guilty for thinking that for even 1 minute, 1 second that he can take the lives of American citizens without our responding.

As I wrote to President Clinton in February 1997, our Nation's response to this cowardly incident is particularly important because of Cuba's proximity to the territory of the United States. And, frankly, I have been disappointed that, to date, our government has not moved to help enforce a civil judgment of \$187.5 million granted to the families of the three deceased United States citizens, a judgment which was rendered against Cuba by a United States District Court Judge, James King, on December 17, 1997.

And likewise in a court case also dealing with the death of an American citizen abroad, I am deeply disappointed that our government has not acted to assist the family of Alisa Flatow, the New Jersey native who was murdered by an Iranian-backed suicide bomber in Israel in April 1995.

In March, 1998, a U.S. District court judge found Iran liable for the death of Alisa and ordered the Islamic Republic of Iran to pay \$247 million in damages to her family. Sadly, the State Department has actually moved to stymie all efforts to liquidate Iranian-owned properties in the United States for the purpose of satisfying that court's verdict.

These two court cases involving the aggrieved families of the Brothers to the Rescue and that involving the Flatow family show that something is wrong. Something is wrong because our government should not be in the business of protecting the assets of those who take the lives of innocent Americans.

I look forward to participating in this hearing and learning what we as a committee can do to ensure that nations that sponsor the murder of Americans, whether they are Cuban Americans, Jewish Americans or any other sort of Americans, that these individuals are made to pay for their crimes.

I thank you.

Mr. McCOLLUM. Thank you very much, Mr. Rothman.

Mr. Hutchinson, do you have any opening remarks?

Mr. HUTCHINSON. No, Mr. Chairman. I do want to thank you for holding this hearing, and I look forward very much to the testimony and the questions and answers. Thank you very much, Mr. Chairman.

Mr. McCOLLUM. Thank you very much, Mr. Hutchinson.

I would like to introduce our first panel at this time.

We have four witnesses on the panel. I am going to introduce them all together. However, we have a unique situation this morning. It is the practice of this subcommittee to put Federal agency witnesses on their own panel. However, Mr. Houlihan is an impor-

tant fact witness helping us tell a tragic story of the shootdown along with the other eyewitnesses. So the Customs Service has agreed to have Mr. Houlihan sit on the same panel for the purposes of answering questions by members of the subcommittee. In doing so, Mr. Houlihan has not thereby endorsed the views and observations of any other witnesses on the panel. He is here sharing his own perspective.

So I will introduce Mr. Houlihan first, who will give his testimony. After his testimony is complete, I will then introduce the other witnesses on the panel who will testify. All the witnesses will then be available for questions by the members.

Our first witness is Mr. Jeffrey Houlihan. Mr. Houlihan served in the Air Force as an air weapons controller trained in mobile and air radar defense. In 1986, he joined the U.S. Customs Service Aviation Program in the area of narcotics interdiction. Mr. Houlihan is a senior detections systems specialist and since 1994 has been engaged in counternarcotics operations over an area encompassing Colombia, the Caribbean basins, the Gulf of Mexico, the southeastern United States and Canada. Mr. Houlihan was monitoring the radar on February 24, 1996, the day the Brothers to the Rescue planes were shot down.

And so, before I bring forward the other witnesses and introduce them, I would like Mr. Houlihan to proceed with his opening statement. Then we will introduce the rest of the panel and let them make their statements and all of you will be questioned together.

Mr. MCCOLLUM. Mr. Houlihan, please proceed.

STATEMENT OF JEFFREY HOULIHAN, SENIOR DETECTION SYSTEMS SPECIALIST, UNITED STATES CUSTOMS SERVICE, DOMESTIC AIR INTERDICTION COORDINATION CENTER

Mr. HOULIHAN. Good morning, Mr. Chairman, members of the committee. I would like to thank you for inviting me here today. I do not have a prepared statement. With your permission, I will simply run down exactly what I saw on that day.

Mr. MCCOLLUM. Certainly. Please do.

Mr. HOULIHAN. Early in the morning, when I first came on duty—understand that I work out of a facility in Riverside, California. Of course, it is Pacific time zone. So when I came on duty at 8 in the morning, it was actually about 11 out in Florida.

When I came on duty, I was informed by the people who had been working before me that the FAA had requested that we monitor our Brothers to the Rescue flight that was planned for flying down toward Cuba that morning. We were told that they intended to make a political statement. We were asked by the FAA to simply watch them as they flew, and if they did anything that was outside normal air regulations, would we please print pictures of our radar scopes and present them to the FAA afterwards? This was not an unusual request. The FAA had asked us for this sort of assistance before, never for the Brothers to the Rescue but on many other occasions.

A little after 2 we first picked up radar contact on the Brothers to the Rescue aircraft as they were heading southbound toward Cuba. About a half an hour after that, at about I believe it was right around 3:00, I picked up radar contact on two high-speed pri-

mary targets; in controller speak, what I saw were interceptor aircraft. Obviously, by the way that they were maneuvering and the speed that they were operating at, I assumed that they were MiGs.

I didn't think much of it at the time. I had never seen MiGs operate in the area before. I was under the impression that the Cuban government didn't have enough money to fuel their aircraft for many flights, and in the 2 years that I had been operating in that area, I had never once before seen MiGs up.

However, I assumed, because I knew the Brothers to the Rescue had not been quiet about their plans to make a flight down toward Cuba that day, that the Cuban government itself also knew about it, and my assumption was that they were simply going to put up what is called a combat air patrol. They were going to keep their aircraft inside their air space and try to deter the Brothers to the Rescue aircraft should they have intended on breaking into their air space. This is normal procedure, something that I have seen many, many times in my own experience.

Later, about 16 after the hour, one of the Cuban MiGs flew outside the Cuban Air Defense Identification Zone and went directly over the top of the three Brothers to the Rescue aircraft. This worried me. I hadn't expected them to come out. Having these high-speed targets heading directly up toward the Florida Keys, going right over U.S. Registered aircraft concerned me. It became an air defense problem to me.

So I immediately called the Southeast Air Defense Sector in Tyndall Air Force Base in Florida. I asked them, did they know what was going on with the Brothers to the Rescue that day? They said, yes. I asked, were they aware, were they seeing the same thing I was seeing? Exact wording was, I thought that a MiG 23 heading toward the U.S. Was scary. Didn't they think so?

And they said, yes. They were aware what was going on. They were seeing the same thing that I was and that they were handling it.

This made me feel considerably better. I hung up the phone and went back to monitoring the Brothers to the Rescue aircraft.

One of the aircraft, I later learned the aircraft flown by Mr. Basulto, penetrated the Cuban Air Defense Identification Zone, that is the 12-mile limit around Cuba and their legal air space, and proceeded eastbound. He was about a mile—the maximum extent he ever got inside Cuban air space was three nautical miles, and he was heading east.

The other two aircraft, one of them stayed about one nautical mile north of the Cuban air defense zone. The other one was about five miles further on, six miles out. They all began to go eastbound. I still saw the high-speed primary targets.

One of the things that is important to understand in this is that a high-speed target rapidly maneuvering an aircraft of a fighter's capabilities, it is very difficult to track on radar. They were in and out of my radar coverage the entire time.

A little after 20 after the hour, I saw one of the Cuban MiGs—of course, at the time I was assuming they were Cuban MiGs. I believed them to be. I saw one of the aircraft approach one of the Brothers to the aircraft from behind. It was, if we line them up in a row, Mr. Basulto's aircraft being the furthest south, this was the

second one, the one that was about a nautical mile outside of Cuban air space and international air space. He came up behind it. As he passed by, the Brothers to the Rescue aircraft disappeared.

Obviously, I was startled. I immediately yelled up to the South Florida controller and said, Tracy, that looked like a shootdown; and he said, yeah, I think it was. It is what it looked like to me. So I directed him to call the FAA immediately and find out if they heard any kind of emergency transmissions, anything that might indicate what we were seeing was actually what was happening. He got on the telephone and made that call.

As he was doing that, I saw Mr. Basulto's aircraft start to maneuver south inside the Cuban ADIZ. It appeared to me he was very close to the spot that the first aircraft had disappeared. Then he started going northbound, left the Cuban Air Defense Identification Zone and proceeded continuing north toward the United States.

The third Brothers to the Rescue aircraft, the one who had been six nautical miles outside of Cuban air space, went westbound and then came back eastbound again for a few miles, looked to me in my opinion that he had probably seen the smoke from the first aircraft being shot down. He then turned northbound, put on about 25 knots of speed, and ran for the United States.

By this time Mr. Stebbons, the Tracy I had referred to earlier, told me that he had talked to the FAA, and the FAA was not aware of any problems. They knew the Brothers to the Rescue were flying that day. They had not heard any emergency beacons. They had not heard any emergency transmissions.

So I still knew what we had seen, so I picked up the phone to call the Air Force again. As I was talking to the Air Force, the third Brothers to the Rescue aircraft was continuing northbound. He was at a position of about 16 nautical miles north of the Cuban ADIZ, and he disappeared. Right after he disappeared, I picked up the Cuban MiG again in the same location now heading southbound toward Cuba.

I asked the Air Force, did you see what I saw? It looks like those two airplanes were shot down. They said they couldn't speak to me because I wasn't on a secure line. I asked them to call back. A few minutes later, they called back.

My intent here, of course, was to be sure that somebody was bringing search and rescue aircraft out into the area in case there had been any survivors. I talked to the Air Force on a secure line, asked if they had seen the same thing I had. They said yes. I asked if they had called search and rescue out. They said they hadn't. I asked—I offered to do it for them. They said it was all right, that they would go ahead and take care of it. I hung up.

Mr. Basulto's aircraft at the time the second shootdown occurred, I saw it was in a very tight orbit, about 14 to 15 miles north of the Cuban ADIZ. My impression, from what I have seen and from my own personal experience as a radar controller, was that he was hiding. It looked to me like he was in a cloud. He was attempting to evade the MiGs that were out in the area at the time. I later learned at the FAA administrative hearing that that is exactly

what he had done. He then pulled out of his orbit, headed north-bound back toward the United States.

We got a call back a couple minutes later from the Coast Guard saying the Air Force had called them and told them to call us to ask where the location was where these aircraft had gone down to get the search and rescue people out. Coast Guard later called. We informed them of the two locations that we had lost contact on the aircraft.

We also told them that there were Cuban MiGs operating still. They said they would wait until the MiGs were gone and then they would go out.

Mr. MCCOLLUM. Thank you very much, Mr. Houlihan, for that very explicit statement of facts of what happened on that day.

I am going to introduce the rest of the panel and ask them to come forward. Then I think, because we do have a vote on at this moment, we will take a break before the rest of the panel proceeds with their statement.

But I would like to invite Mr. Fowler, Mr. Basulto, Mr. Iglesias and Ms. Iriondo to come forward and take your seats; and I will introduce you.

The witness that will follow Mr. Houlihan will be Mr. George Fowler. Mr. Fowler is a native of Havana, Cuba, and is presently General Counsel on the Board of Directors of the Cuban American National Foundation, a non-profit organization dedicated to the promotion of a free and democratic Cuba. After pursuing his undergraduate degree from Louisiana State University, Mr. Fowler continued his education at Tulane Law School where he received his J.D. In 1988, he founded the international law firm of Rice Fowler.

He has served as chairman of the International Section of the Louisiana Bar Association and is a chairman of the Admiralty and Maritime Committee of the section of international law and practice of the American Bar Association. In addition to his legal work, Mr. Fowler has written and lectured extensively on international law and world trade. Mr. Fowler will also be presenting the testimony of Mr. Regalado, a recent Cuban defector.

Our next witness is Mr. Jose Basulto. Mr. Basulto is the founder and President of the Brothers to the Rescue. He learned to fly planes in Cuba and was exiled to the United States when Fidel Castro seized power.

In 1991, Mr. Basulto organized a group of volunteer Cuban American pilots into Brothers to the Rescue. The organization, a small non-profit corporation operating out of the Miami area airports, conducted its humanitarian missions of surfing for rafters in the Florida Straits. The pilots' search and rescue missions have often located thousands of rafters escaping from Cuba and air dropped supplies to them.

Mr. Basulto has been a courageous and outspoken critic of Fidel Castro. Mr. Basulto was the pilot of the one plane that escaped on February 24, 1996, as you have heard Mr. Houlihan describe.

Our next witness is Mr. Arnaldo Iglesias. Mr. Iglesias is the former secretary of the Brothers to the Rescue and one of the Brothers' pilots. In 1 year, through Mr. Iglesias' tireless efforts, the Brothers' pilots flew more than 1,000 search and rescue flights. To date, it is estimated that the efforts of the Brothers to the Rescue

has saved one life for every 5 hours of flight time. This is considered a record rate among professional search and rescue organizations. Mr. Iglesias was on the plane that survived on February 24, 1996.

And our final witness on this panel is Ms. Sylvia Iriondo. After fleeing her native Cuba as a political refugee in 1960, Sylvia Iriondo has been actively involved in Cuban and elderly affairs. She served on the internal rescue committee following her arrival in the United States and since that time has worked on the committees of several charitable organizations and government commissions. In 1994, she and a group of Cuban American women founded MWAR for Cuba, that is, Mothers and Women Against Repression for Cuba. Ms. Iriondo currently serves as president of the organization. She was also on the plane that survived on February 24 in that shutdown.

The vote that we have today is on the journal. We should have an hour before another vote after this one, so in order not to break the continuity of the testimony that we are about to receive, which is very important to us, I am going to recess this committee. We will come right back as soon as the vote on the floor is completed. The committee stands in recess.

[Recess.]

Mr. McCOLLUM. The Subcommittee on Crime will come to order.

When we took our recess, I had just introduced the remainder of our first panel, and at this time I would like to call upon Mr. Fowler to give his testimony, and then, in order, each of the witnesses that have been introduced at this point to describe what they wish to describe to us.

Mr. McCOLLUM. Mr. Fowler, you are recognized.

STATEMENT OF GEORGE FOWLER, GENERAL COUNSEL OF THE CUBAN AMERICAN NATIONAL FOUNDATION

Mr. FOWLER. Thank you, Mr. McCollum. I came to this country 40 years ago at the age of 9 as a refugee from Cuba, so I am very honored and very in awe of being here in front of this committee. And I thank you and I thank Dan Bryant and everybody here in this panel or this committee, because I know everybody here is committed to what we are committed to, and that is justice in this case of Brothers to the Rescue.

One of my primary roles as General Counsel of the Cuban American National Foundation is to oversee legal activities related to the goal of bringing Fidel Castro to justice for his crimes against humanity. In connection with that work, I have studied the facts and the legal underpinnings with regard to this murder, and it is my legal opinion that there exists sufficient evidence and legal basis for the criminal indictment of Fidel Castro. What we don't have is the will to do it. I believe it is in the hands of President Clinton and this administration to bring about this indictment.

There have been some interesting developments since the murder of these pilots. One of them was the decision by Judge King in the Southern District of Florida, a Federal judge that looked at all the evidence presented, and he came to the conclusion that the Cuban government was responsible for these murders. He is a very learned judge, and he took a great deal of time to write his opinion.

I want to quote from his opinion, because I think it is important for everybody here to hear what this judge had to say:

"[T]he government of Cuba, on February 24, 1996, in an outrageous contempt for international law and basic human rights, murdered four human beings in international air space over the Florida Straits. The victims were Brothers to the Rescue pilots, flying two civilian, unarmed planes on a routine humanitarian mission"—this was a finding by a Federal judge—"searching for rafters in the waters between Cuba and the Florida keys.

"[A]s the civilian planes flew over international waters, a Russian-built MIG 29 of the Cuban Air Force, without warning, reason or provocation, blasted the defenseless planes out of the sky with sophisticated air to air missiles in two separate attacks. The pilots and their aircraft disintegrated in the mid-air explosions following the impact of the missile. The destruction was so complete that the four bodies were never recovered."

A Federal Court of the United States of America so found, and we have no indictment yet of Mr. Castro. That murder occurred, according to our statutes, the murder statute, the Federal murder statute, 18 United States Code 111, cannot be denied, and it defines murder as the "unlawful killing of a human being with malice aforethought." That is what happened here.

Since that decision, more interesting things have happened, and you touched on it, Mr. McCollum. The United States Attorney for the Southern District of Florida and the FBI announced a superseding indictment in connection with the case of those Castro spies, and they added a charge of conspiracy to perpetrate murder in connection with the shootdown of the planes and charged one Gerardo Hernandez with conspiracy to commit murder within the special maritime and territorial jurisdiction of the United States, the same statute that I referred to earlier.

But the conspiracy aspects of it, the indictment states that Hernandez and others, known and unknown to the grand jury, entered into a conspiracy whose object was to support and help implement a plan for violent confrontation of BTTR aircraft with decisive and fatal results, a conspiracy. Who was Gerardo Hernandez conspiring with? He was conspiring with his boss, Fidel Castro.

The indictment further states that in late January the Cuban Directorate of Intelligence reported approval by superior headquarters of Operacion Escorpion, Operation Scorpion, in order to confront Brothers to the Rescue, cause a confrontation with them, and conveyed instructions from Miami agents which included informing on their flight data.

The indictment also states a Cuban agent, Mr. Juan Pablo Roque, was tasked and did in fact penetrate and inform on the Brothers to the Rescue. He was working for Castro as a spy, and he departed as part of the plot the day before the downing of the planes. He left Miami, left his wife behind, and went back to Cuba.

That was part of a plan, and Mr. Iglesias will develop that. But the indictment alludes to it.

After the shootdown, according to the indictment, the Cuban Directorate of Intelligence recognized Hernandez for his role and announced his promotion to captain for his job in connection with the downing of the planes and the murder of these people. The Directorate of Intelligence noted that Fidel Castro, the commander in chief, had visited twice to analyze steps to follow up on the operation and had declared that they had dealt a hard blow to the Miami right.

So this indictment is a step in the right direction. I want to think that they are moving toward an indictment of Fidel Castro. They mention Fidel Castro in the indictment, but they indict Gerardo Hernandez. That is like indicting the monkey, not the organ grinder. What we need here is an indictment of Fidel Castro, not of his spies. The man who ordered this was Fidel Castro.

The only action that could provide any sense of justice to these people and to the people who died and to their families is the indictment of Fidel Castro. I certainly hope that our government is working toward that end.

It has been over 3 years, though, Mr. McCollum. Can there be any doubt in the minds of any reasonable person, any reasonable juror, that Castro, who involves himself in the most minute and ridiculous details of Cuban affairs, did not give the order to shoot the planes down? No, there cannot be.

The circumstantial evidence is formidable. You are going to hear the statement of Adel Regalado Ulloa, through his lawyer, because he still is cooperating with the FBI. He will provide specific details about the training that Castro's pilots had to shoot slow-moving targets, like an unarmed Cessna, and he will provide testimony through his lawyer to that effect.

They actually trained to shoot two little Cessnas. You will hear the testimony of Lazaro Betancourt Morin, who just showed up a few minutes ago, the most recent defector from Castro's security, a captain, confirming beyond any doubt that an order of this nature had to be planned and approved by Fidel Castro himself.

You will see the transcript of the radio communications between the Cuban MIG 29 and the ground control in Cuba asking for authorization. Castro had already ordered the shootdown, but just in case they asked for authorization and they got it, and they shot down these planes.

We have transcripts of the testimony from Robert White and Eugene Carroll, a former admiral, who stated that they met in the days before the downing of the plane with the Chief of Staff of the Cuban military, one General Rosales del Toro, who asked them, what would you, meaning what would the United States do, if we shot down the planes? The question is, we are going to shoot them down. What is your response?

Well, they must have not been told anything that really frightened them, because they shot the planes down anyways.

Beyond the circumstantial evidence is, of course, the direct evidence from Fidel Castro himself. As you have pointed out and Representative Diaz-Balart pointed out, Castro admitted in the Time Magazine interview with Reginald K. Brack, Jr., the chairman of Time, Inc., that he ordered the downing of the planes. He met with his brother, Raul Castro, as big a murderer as he is, and ordered

the downing of the planes. He admitted responsibility. So we have all this great circumstantial evidence, but we don't need much more. The man admitted that he did it, and we don't have an indictment against him.

I am confident the information we are going to present in this hearing is only but the tip of the iceberg of the information that the applicable and pertinent law enforcement agencies that work on this case have, but that evidence is sufficient to bring in an indictment.

Besides the murder statute, the statute I believe should be considered is what is known as the anti-terrorism statute, which is embodied in 18 United States Code section 2332, which provides a Federal criminal offense for the murder or conspiracy to murder a U.S. National while that national is outside the United States. This was enacted years back in order to go beyond the territorial waters of the United States and in a foreign country when involved in an act of terrorism. That statute is very clear and very well defined, homicide and conspiracy. You can indict Castro for either one or both.

There are some procedural considerations under this particular statute, this anti-terrorism statute, and that is that it requires a statutory certification by the Attorney General under section (d) that the offense was intended to coerce, intimidate or retaliate against a government or a civilian population. Fortunately for Attorney General Janet Reno, that certification has been satisfied.

In the Cuban Liberty and Democratic Solidarity Act of 1996, the Libertad Act, the United States Congress made specific findings that the attack was timed in order to intimidate against the meeting of Concilio Cubano. You might remember on the day of the downings of the planes, the murder of the pilots, a group of peaceful human rights activists called Concilio Cubano were meeting, and the purpose of this downing was to intimidate them, is Castro's way of telling them and his own people that if you speak up against my government, I will kill you. Look, I am going to kill American citizens, and nothing is going to happen to me, and he did it.

Another issue that I think you might need to touch upon is the "head of state" immunity, which is an issue that has to be resolved because, whether we like it or not, Castro is the dictator or president of Cuba.

We don't have a problem here, in my opinion. The practice of asserting extra territorial jurisdiction over persons domiciled in a foreign soil subject to a United States warrant is accepted, and we have the latest example of the case involving the dictator Manuel Noriega, where he was brought to the United—indicted and brought to the United States for his crimes. That is because his crimes, like Castro's crimes, were ultra vires. They were illegal acts. They are not part of the acts of a regular sitting president or prime minister of a government, lawful acts or acts in order to protect a sovereign nation.

The communications between the MIG 29 and Havana clearly showed that they knew that these were defenseless people, little-bitty Cessnas flying without any weapons. There was no threat to the Cuban people or to the government. This was an act by Fidel

Castro that was an illegal act, and he enjoys no immunity when he acts illegally and criminally.

That is why Manuel Noriega is in jail today, because his crimes related to drug dealing. They have nothing to do with the affairs of state. They had to do with enriching himself.

Now, in the Noriega case, the 11th Circuit Court of Appeals said, all right, we don't have a sovereign immunity problem like the Foreign Sovereign Immunity Act, the head of state immunity does not find a formal basis in U.S. Law. What the Court of Appeals said is you look to the executive branch, and they realized that, in that case, they had sent troops, picked up the man and brought him here for a crime.

We need the executive branch of this country, we need President Clinton, the State Department, to say that Fidel Castro does not enjoy immunity as head of state for these crimes. These are ultra vires, illegal crimes. He needs to do that.

When he does that, he gives the green light to the U.S. Attorney for the Southern District of Florida to add one name to the indictment presently pending, that of Fidel Castro. That is what needs to happen here.

I will just touch upon one case, which is *Jimenez v. Aristeguieta*, where the 5th Circuit Court of Appeals rejected claims of a former Venezuelan dictator whose extradition was being challenged. He said all of his acts while he was a dictator were acts of state which precluded prosecution. The court rejected that and said, no, those acts were for his own benefit. Like Castro's act was for his own benefit, to stay in power. He has stayed in power for 40 years. He has done it by killing people. That is how he stayed in power. That is not an act of the state that needs protection or immunity.

I am going to conclude by telling you that on one of the flights carried out by the Brothers to the Rescue, they entitled it, interestingly, Martin Luther King, Jr. That was the name of the operation they gave it, and it was appropriate, because in that trip, on January 13th, 1996, they blanketed the City of Havana with leaflets urging nonviolent resistance, which is what Martin Luther King stood for and stands for today.

Now, after the Rosa Parks arrest, Martin Luther King was quoted as saying, "If we are wrong, justice is a lie, and we are determined here in Montgomery to work and fight until justice runs down like water."

Let there be no doubt that we do not believe that in America justice is a lie, and that we will likewise work and fight until justice runs down like water and Fidel Castro is brought to account for all his crimes against humanity.

Mr. MCCOLLUM. Thank you very much, Mr. Fowler, for that very succinct statement.

[The prepared statement of Mr. Fowler follows:]

PREPARED STATEMENT OF GEORGE FOWLER, GENERAL COUNSEL OF THE CUBAN
AMERICAN NATIONAL FOUNDATION

My name is George Fowler and nearly 40 years ago, in 1960, I fled the Castro dictatorship and at the age of 9 arrived in the United States of America. I am now proudly a United States citizen and I am humbled and honored by the opportunity to testify before the Committee on the Judiciary, U.S. House of Representatives.

For the past 25 years, I have been engaged in the practice of international and admiralty law and was the founding partner of the international law firm, Rice Fowler. I presently serve on a pro bono basis as General Counsel of the Cuban American National Foundation. One of my primary roles is to oversee the legal activities related to the goal of bringing the dictator Fidel Castro to justice for his crimes against humanity. In particular, I have studied the factual and legal basis for the possible criminal indictment of Fidel Castro for the murder of the Brothers to the Rescue ("BTTR") pilots.

It is my opinion that there exists sufficient evidence and ample legal basis for the criminal indictment of Fidel Castro.

On December 17, 1997, Judge James Lawrence King of the United States District Court for the Southern District of Florida, in the civil action filed by the families of three of the four pilots found as follows:

"The Government of Cuba, on February 24, 1996, in an outrageous contempt for international law and basic human rights, murdered four human beings in international airspace over the Florida Straits. The victims were Brothers to the Rescue pilots, flying two civilian, unarmed planes on a routine humanitarian mission, searching for rafters in the waters between Cuba and the Florida Keys.

As the civilian planes flew over international waters, a Russian built MIG 29 of the Cuban Air Force, without warning, reason, or provocation, blasted the defenseless planes out of the sky with sophisticated air to air missiles in two separate attacks. The pilots and their aircraft disintegrated in the air mid-air explosions following the impact of the missiles. The destruction was so complete that the four bodies were never recovered."

That murder occurred, as defined in the statutes of the United States, cannot be denied. 18 U.S. Code §1111 defines murder as the "unlawful killing of a human being with malice aforethought".

Since that decision, on May 7, 1999, the United States Attorney for the Southern District of Florida and the Federal Bureau of Investigation announced the return of a Superseding Indictment adding a charge of conspiracy to perpetrate murder in connection with the February 24, 1996 shoot down of the BTTR planes, and thus charged one Gerardo Hernandez with conspiracy to commit murder within the special maritime and territorial jurisdiction of the United States in violation of Title 18, United States Code §1117. The indictment states that Hernandez and others, known and unknown to the Grand Jury, entered into a conspiracy whose object was to support and help implement a plan for violent confrontation of BTTR Aircraft, with decisive and fatal results. The indictment further states that in late January, 1996, the Cuban Directorate of Intelligence reported approval by superior headquarters of "Operación Escorpión" in order to confront BTTR and conveyed instructions from Miami agents which included informing on BTTR flight data. The indictment also states that Cuban Agent Juan Pablo Roque was tasked to penetrate and inform on BTTR and that Roque departed Miami on February 23, 1996, a day before the shoot down. After the shoot down, according to the indictment, the Director of Intelligence recognized Hernandez for his role, and announced his promotion to captain. The indictment further stated that the Director of Intelligence noted that Fidel Castro, the commander in chief, had visited twice to analyze steps to follow-up on the operation; and had declared that they had dealt a hard blow to the Miami right.

That indictment is clearly a step in the right direction, but falls short of the only action which could provide any sense of justice to the tragic murder of these four brave men, the indictment of Fidel Castro. Our government should indict the mastermind of this heinous crime.

Can there logically be any doubt in the minds of any reasonable juror that Fidel Castro, the absolute dictator of Cuba, who is known to make decisions on the most minute matters affecting Cuba, did not order these aircraft to be shot down? The answer is no.

The circumstantial evidence is formidable. We have the statement of Adel Regalado Ulloa, who provided specific details on the actual training of Castro's pilots to shoot the BTTR planes.

We have the testimony of Lazaro Betancourt Morin, the most recent defector from Castro's security, confirming beyond doubt that any decision of this nature had to be planned and approved by Fidel Castro himself.

We have the transcript of the radio communications between the Cuban MIG 29 and Cuban ground control requesting and obtaining the authorization to commit the murder of the pilots.

We have the taped interview of Eugene Carroll, U.S. Navy Rear Admiral (Ret.) who stated that General Rosales del Toro, the Chief of Staff of the Cuban Military,

specifically asked Admiral Carroll what the U.S. reaction would be if they shot down the BTTR planes.

Beyond circumstantial evidence, is direct evidence from Fidel Castro himself. In an interview (published in *Time Magazine* on March 11, 1996) with Reginald K. Brack, Jr., Chairman of Time, Inc., Fidel Castro admitted that he discussed the downing of the planes with Raul Castro and the Joint Chiefs of Staff, that he gave the order to the head of the Air Force to down the aircraft, and in his unique form of arrogance, admitted responsibility for the murder.

I am confident that the information presented in this hearing is but the tip of the iceberg of the information that has been gathered by the relevant law enforcement agencies of our government relative to the complicity of Fidel Castro, but that evidence is sufficient to bring the indictment.

Criminal Causes of Action and Analysis

In addition to 18 U.S. Code § 1111 mentioned above, 18 U.S.C. § 2332, et seq. renders as a federal criminal offense the murder or conspiracy to murder a U.S. national while that national is outside the United States. In pertinent part, this statute provides that:

- (a) *Homicide.* Whoever kills a national of the United States, while such national is outside the United States, shall—
 - (1) if the killing is murder, as defined in section 1111(a), be fined under this title, punished by death or imprisonment for any term of years to life, or both; and
- (b) *Attempt or conspiracy with respect to homicide.* Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall—
 - (2) in the case of a conspiracy . . . to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the completion of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

Procedural Considerations: Attorney General Certification

With respect to an indictment against Fidel Castro under 18 U.S.C. § 2332 (murder or conspiracy to murder a U.S. national outside of the U.S.), an important procedural consideration relates to a statutory certification requirement and whether this requirement is satisfied in the BTTR case. In particular, 18 U.S.C. § 2332(d) requires that before prosecuting an individual under the statute, the U.S. Attorney must obtain prior certification by the Attorney General (or its high ranking subordinate having responsibility for criminal prosecutions) that the offense was intended to coerce, intimidate or retaliate against a government or a civilian population.

The statutory certification requirement under 18 U.S.C. § 2332(d) is satisfied here. In the Cuban Liberty and Democratic Solidarity ("LIBERTAD") Act of 1996, the United States Congress made specific legislation findings that the attack was timed in order to intimidate or retaliate against the meeting of Concilio Cubano. This finding is supported by the fact that prior to the attack, BTTR had flown its humanitarian missions for several years.

Procedural Considerations: Head-Of-State Immunity

With respect to an indictment of Fidel Castro under title 18 U.S.C. § 2332 (immunity of U.S. national outside United States), an important procedural consideration is the extent to which "head of state" immunity may bar the imposition of criminal liability on Fidel Castro, individually.

The practice of asserting extra territorial jurisdiction over persons domiciled in foreign soil subject to a United States warrant is historically accepted. In the recent appellate court decision of *United States v. Noriega*, 117 F.3d 1206 (11th Cir. 1997), the Eleventh Circuit affirmed extra-territorial jurisdiction over a criminal defendant asserting "head-of-state" immunity. See *Id.* at 1212.

Head-of-state immunity is likely the only genre of immunity implicated in this case. Unlike diplomatic immunity (governed in the U.S. by the Vienna Convention on Diplomatic Relations) or sovereign immunity (governed in the U.S. under the Sovereign Immunities Act of 1976, 28 U.S.C. § 1330, 1332(a)(2)-(4), 1391(f), 1441(d), 1602-1611), head-of-state immunity has no formal basis in United States law. See *Jerrold L. Mallory, "Resolving the Confusion Over Head-of-State Immunity: The Defined Right of Kings,"* 86 Colum. L. Rev. 169 (1986); Michelle W. Iafrate, "The Grant of Jurisdiction in *United States v. Noriega*", 9 Ariz. J. Int'l & Comp.L. 587. Consequently, the Eleventh Circuit in the *Noriega* case required reference to the Execu-

tive Branch for direction on the propriety of a head-of-state immunity claim. See *Id.* at 1212.

Although it is generally recognized that head-of-state immunity was designed to give foreign leaders freedom to perform their duties without being subjected to the interference of a foreign country's legal system, see *In Re Grand Jury Proceedings*, Doe No. 700, 817 F.2d 1108, 1110 (4th Cir.), *cert. denied*, 106 S.Ct. 456 (1987), this species of immunity cannot be cited where a foreign head-of-state engages in *ultra vires*, if not wholly illegal, acts.

In *Jimenez v. Aristeguieta*, 311 F.2d 547, 557-58 (5th Cir. 1962), the Fifth Circuit rejected claims by the appellant, a former Venezuelan dictator whose extradition was being challenged, that all of his acts committed while he was Venezuelan dictator were acts of state which precluded prosecution. See *Id.* at 557. In that case, the court concluded that dictator's actions were for his own benefit, and could not be characterized as sovereign acts; therefore, they were not entitled to state protection. See *Id.* at 558.

In this case, radio communications between the MIG-29 and the Havana Military Control indicate that the planes carrying the BTTR members were affirmatively identified as civilian. See *Alejandro, et al v. The Republic of Cuba* and the Cuban Air Force, CV No. 96-10126 at 11-12 (S.D.Fla. December 17, 1997). Equally clear in this case was that the plane was not flying into, much less within, Cuban airspace. Therefore, the act of shooting down these planes was an *ultra vires* act, without provocation and wholly unrelated to a sovereign right to preserve national security.

Where the acts underlying the criminal indictment of a head-of-state are not "authorized official acts", such an indictment would not be obviated by a head-of-state defense. Just as those drug-related activities underlying the U.S. indictment of Manuel Noriega were construed to not constitute acts of state inasmuch as they furthered only the defendant's self interest, so too would the extra-governmental act of shooting down planes manned by those who politically disagree with the Castro ideology support criminal indictments against Fidel Castro. Therefore, such indictments are unfettered by a claim of head-of-state immunity.

On January 13, 1996, the BTTR carried out an operation which they entitled "Martin Luther King Jr." during which the City of Havana was blanketed with leaflets urging non-violent resistance.

The Reverend Martin Luther King, Jr., speaking after Rosa Parks' arrest, stated: "If we are wrong, justice is a lie. And we are determined here in Montgomery to work and fight until justice runs down like water."

Let there be no doubt that we do not believe that justice is a lie in America and that we will likewise fight until justice runs down like water and Fidel Castro is brought to account for his crimes against humanity.

Mr. McCOLLUM. Mr. Basulto, you are recognized for your statement. Thank you for being with us.

STATEMENT OF JOSE BASULTO, PRESIDENT, BROTHERS TO THE RESCUE

Mr. BASULTO. Thank you.

Mr. Chairman, distinguished Members of Congress, members of the press, ladies and gentlemen, I thank you for this opportunity to share with you my thoughts and relay my experiences regarding the February 24th, 1996, shootdown of two U.S.-flagged BTTR civilian aircraft by Cuban MIGs and the murder of its four crewmen in international air space north of Havana.

I also wish to thank Congressman Bill McCollum and the Cuban American National Foundation for their efforts in making this hearing possible. I am here today as part of a continuing quest for truth and justice, something I will never abandon.

Brothers to the Rescue is and has always been a humanitarian pro-democracy organization. Our mission is to save lives and promote the efforts of the Cuban people to free themselves from dictatorship through the use of active non-violence. For this reason, our brothers were murdered.

I was the main target of the attack of February 24, 1996, and the pilot of the only airplane that survived. I wholeheartedly agree with the intent of this hearing to help bring a criminal indictment against the principal perpetrator of this horrible crime, Cuban dictator Fidel Castro. Brothers to the Rescue has formally requested the Office of the United States Attorney in the Southern District of Florida to bring criminal charges against Fidel Castro and others responsible. I am also adamant about the fact that justice will only be served when all those directly and indirectly responsible for these murders are identified and brought to justice.

On the surface, the idea of this hearing appears excellent, as the U.S. Congress has the capacity to exert pressure on the Clinton-Gore Administration (the Administration) to allow the Justice Department to indict Castro. However, there is a glaring reality that must be addressed, the question of why criminal charges have not been brought against Castro already, despite the fact that his guilt has been well established and all the legal elements to prove the offense are there. Why, after over 3 years, do these crimes still remain unpunished and unresolved? U.S. Authorities are obliged and duty bound to act since three U.S. Citizens, a legal resident alien and U.S. Flag airplanes were involved. I submit that the Administration is aware that the indictment of Castro could expose complicity in the murders of Armando Alejandro, Jr., Carlos Costa, Mario de la Peña and Pablo Morales by others in this government.

This issue first came before the Congress on September 18th, 1996. Government witnesses were invited to participate. The administration purposely presented completely uninformed witnesses. At that time we made very serious allegations and raised a number of pertinent questions that still remain unanswered.

We are convinced that answers to these questions can only be obtained compelling the testimony of witnesses. This was not done then, and it must be done now if we really intend to get to the bottom of this. Brothers to the Rescue asks this subcommittee to remove the main obstacle in finding truth and justice in this tragedy, the politically motivated coverup of the truth by the Administration and its refusal to bring charges against Castro and all his accomplices, including those here in the United States who might have played a part in this tragedy.

We believe that the accomplices in the Administration are just a few, unfortunately, in high places. They shamefully shield themselves under the privileges of national security to hide their guilt.

This subcommittee has the capacity to obtain, under subpoena, answers to Brothers to the Rescue questions and to expose those wrongful actions that still today impede the indictment of Fidel Castro.

Today we submit for the record, a dossier that contains some of the questions raised and pertinent information which led us to the conclusion that this crime could have been prevented and would have not been possible without the Administration's consent and collaboration. We believe that this dossier helps establish that the Administration had prior knowledge of Castro's intentions. It also questions certain actions and omissions, such as the interruption of defense mechanisms precisely during the time that the shootdown occurred.

For instance, my airplane miraculously escaped with three other witnesses on board after a documented, uninterrupted 53-minute chase. During this period of time, the Cuban MIGs shot down two Brothers to the Rescue planes in international air space. The U.S., whose defense mechanisms were on alert that day to follow Brothers to the Rescue flights, saw these events unfold on its radar and heard them on its monitors. Nevertheless, they remained motionless and in absolute silence, as if no response was required to protect U.S. Lives, property and national security. Why?

Due to the short amount of time allowed for this presentation, we cannot read all the questions. We have distributed the following:

One, a press release dated October 3rd, 1996, issued by Senate Foreign Relations Committee Chairman Jessie Helms, which includes a list of very pertinent questions.

Two, a list of questions prepared by Brothers to the Rescue and sent to the Attorney General of the United States by Congresswoman Ros-Lehtinen and Congressman Diaz-Balart.

Three, the response from the Inspector General of the Department of Defense dated September 28, 1998, was that the two reports issued by the Department of Defense on the shootdown are classified secret. He adds, "we regret that we are unable to provide a more comprehensive response to the complicated and sensitive questions raised by Mr. Basulto."

We ask those of you who have the required security clearance, please read the reports on the shootdown produced by the Department of Defense and other investigative bodies and perhaps provide us with plausible explanations.

As our attorney, Mr. Ralphe Fernández, has stated, we must go to the substance. This hearing is not about going before a group ranting and raving about Castro's complicity. It is about specific times, dates, places and players in a labyrinth. It is about some missing links, denials, failures to produce, espionage and what has happened in collateral proceedings.

Everything indicates that the Administration intends to cover up the truth with silence, contradictions, falsehoods and the convenient invocation of national security, and will continue to shield Castro and his accomplices. If the Administration is innocent of misconduct, then give us the evidence to review that position. They should not be afraid.

I now ask you as representatives of the American people to uphold truth and justice. It is not possible for justice to prevail if we allow it to be selective.

Thank you very much.

Mr. McCOLLUM. Thank you very much, Mr. Basulto.

[The prepared statement of Mr. Basulto follows:]

PREPARED STATEMENT OF JOSE BASULTO, PRESIDENT, BROTHERS TO THE RESCUE

Distinguished members of Congress, members of the press, ladies and gentlemen: I thank you for this opportunity to share with you my thoughts and relate my experiences regarding the February 24, 1996 shoot-down of two U.S. flag BTTR civilian aircraft by Cuban MiGs and the murder of its four crewmen, in international airspace, north of Havana.

I also wish to thank Congressman Bill McCollum and the Cuban American National Foundation for their efforts in making this hearing possible. I am here today as part of a continuing quest for *truth and justice*, something I will never abandon.

Brothers to the Rescue is and has always been a humanitarian, pro-democracy organization. Our mission is to save lives and promote the efforts of the Cuban people to free themselves from dictatorship through the use of active nonviolence. For this reason, our brothers were murdered.

I was the main target of the attack of February 24, 1996 and the pilot of the only airplane that survived it. I wholeheartedly agree with the intent of this hearing: to help bring a criminal indictment against the principal perpetrator of this horrible crime, Cuban dictator Fidel Castro.

BTTR has formally requested the office of the United States Attorney, in the Southern District of Florida, to bring criminal charges against Fidel Castro and others responsible. I am also adamant about the fact that justice will only be served when *all those directly and indirectly responsible* for these murders are *identified and brought to justice*.

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Why, after over three years, do these crimes still remain unpunished and unresolved? U.S. authorities are obliged and duty bound to act since three U.S. citizens, a legal resident alien, and U.S. flag airplanes were involved.

I submit that the Administration is aware that the indictment of Castro could expose complicity in the murders of Armando Alejandro, Carlos Costa, Mario de la Peña and Pablo Morales, by others in this government.

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We are convinced that answers to these questions can only be obtained compelling the testimony of witnesses. This was not done then, and it must be done now if we really intend to get to the bottom of this.

BTTR asks this subcommittee to remove the main obstacle in finding truth and justice, in this tragedy: the politically motivated cover up of the truth by the Administration and its refusal to bring charges against Castro and all his accomplices, including those here who may have played a part in this tragedy.

We believe that the accomplices in the Administration are just a few, but unfortunately, in high places. They shamefully shield themselves under the privileges of "national security" to hide their guilt.

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We believe that this dossier helps establish that the Administration had prior knowledge of Castro's intentions. It also questions certain actions and omissions, such as the interruption of defense mechanisms precisely during the time that the shoot-down occurred.

For instance, my airplane miraculously escaped with three other witnesses on-board after a documented, uninterrupted 53-minute chase. During this period of time, the Cuban MiGs shot down two BTTR planes in international airspace. The U.S., whose defense mechanisms were on alert that day to follow BTTR's flight, saw these events unfold on its radars and heard them on its monitors. Nevertheless, they remained motionless and in absolute silence, as if no response was required to protect U.S. lives, property and national security. Why?

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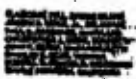
- A press release dated October 3, 1996, issued by Senate Foreign Relations Committee Chairman Jesse Helms, which includes a list of very pertinent questions.
- A list of questions prepared by BTTR and sent to the Attorney General of the United States by Congresswoman Ileana Ros-Lehtinen and Congressman Lincoln Diaz-Balart. The response from the Inspector General of the Department of Defense dated December 28, 1998 was that the two reports issued by the Department of Defense on the shoot-down are classified secret. It adds: "...

we regret that we are unable to provide a more comprehensive response to the complicated and sensitive questions raised by Mr. Basulto."

We ask that those of you who have the required security clearance please read the reports on the shoot-down produced by the Department of Defense and other investigative bodies and perhaps provide us with plausible explanations.

As our attorney Ralph E. Fernández has stated, we must go to the substance. This hearing "... is not about going before a group ranting and raving about Castro's complicity. It is about specific times, dates, places and players in a labyrinth. It is about some missing links, denials, failures to produce, espionage, and what has happened in collateral proceedings."

Everything indicates that the Administration intends to cover up the truth with silence, contradictions, falsehoods and the convenient invocation of "national security", and will continue to shield Castro and his accomplices. If the Administration is innocent of misconduct, then give us the evidence to review that position. They should not be afraid. I now ask you, as representatives of the American people, to uphold truth and justice. It is not possible for justice to prevail if we allow it to be selective.



FOR IMMEDIATE RELEASE
Date: October 3, 1996

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-4225

Contact: Marc Thiessen
Phone: (202) 224-4651

HELMS CHARGES U.S. KNEW PLANES IN CUBA SHOOT DOWN WERE IN DANGER

*Says U.S. Officials Watched as MIGs Approached,
Yet "Nothing Was Done to Prevent the Tragedy"*

WASHINGTON, DC — Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) today charged that U.S. officials knew three American civilian planes shot down by Cuban government earlier this year were in danger, but took no action to either save them or even alert them of the impending attack. In letters to the Secretaries of State, Defense and Treasury, Helms called on them to direct their Inspectors General to investigate the incident.

"The American people have not been told the truth about this tragic event," Helms wrote in identical letters delivered today to Secretaries Christopher, Perry and Rubin. "There is substantial and growing evidence that U.S. military and civilian authorities were aware that the three American civilian planes...were in danger before Cuban fighters shot two of them down," Helms said.

"U.S. officials watched as Cuban MIGs headed toward the civilian aircraft," and yet, Helms wrote, "nothing was done to prevent the tragedy or to alert the civilian pilots."

Helms charges there is evidence that "Cuban aircraft were at one point about three minutes off the U.S. coast — and there was no U.S. reaction." He notes that "in the past U.S. aircraft were scrambled when Cuban aircraft were flying with a far less aggressive purpose and at greater distance from U.S. shores."

Helms included a list of questions he wanted answered about the incident. A copy of the letter and questions are attached.

- END -

**Questions on the February 24, 1996
Shoot-down of "Brothers to the Rescue" Aircraft**

1. Do U.S. officials have the capability of contacting civilian aircrafts such as "Brothers to the Rescue" while they are in flight? If so, which agencies have the capability? Has "Brothers to the Rescue" ever been notified by U.S. officials about their flying in the Florida Straits to rescue Cuban refugees? If so, please provide specific details regarding each event.
2. Is the Department aware of any prior incident where Cuban military aircraft followed and/or chased "Brothers to the Rescue" aircraft in the Florida Straits? If such an event occurred, did U.S. officials respond in any manner, e.g., did they notify "Brothers to the Rescue?"
3. Is the Department aware of any incident where Cuban military aircraft have followed and/or chased U.S. civilian and/or military aircraft? If so, please describe each incident.
4. At 3:15 p.m., on February 24, 1996, a U.S. Customs official stationed in California placed a call to the Southeast Air Defense at Tyndall Air Force Base. What was the substance of this call? What was the reaction and/or response to his call by officials at Tyndall AFB? [Please include a copy of the recorded transcript of the phone call.]
5. According to a sworn statement by the Customs official who contacted Tyndall AFB about the Cuban MIG's, normal security procedures were not followed during the incident. Instead, the procedures were described as "extremely irregular." What are the normal security procedures? What happened in this case? Were the procedures followed? If not, why not?
6. Why were the civilian "Brothers to the Rescue" pilots not warned about the Cuban MIGs?
7. What measures could the US military have taken to protect the "Brothers to the Rescue" pilots? Were any of them taken? Who made the final decision not to notify the "Brothers to the Rescue" pilots before they were shot down? In this case, what level of authority did the final decision-maker(s) have?
8. Did U.S. officials observe or otherwise have knowledge of the downing of the first "Brothers to the Rescue" aircraft at the time of the downing? After the first "Brothers" aircraft was shot down, was any consideration given by any U.S. official to notify the remaining two "Brothers" aircraft? If not, why not? If so, how was the decision reached, and who made the decision? After the second "Brothers" aircraft was shot down, then was there any consideration given to notifying the remaining aircraft that it was in danger?

If not, why not? If so, please explain the details.

9. On February 24, did Cuban MiGs come within approximately three minutes (flight time) of U.S. territory? Is there any assessment as to whether Cuban MiGs being approximately three (3) minutes from U.S. territory constitute a threat to the United States?
10. At what point has or would the U.S. military scramble aircraft, or take other actions, in response to hostile and/or aggressive actions by any element of the Cuban military?
11. How frequently do Cuban military aircraft fly outside the northern 12 mile territorial limit of Cuba? What is the U.S. military response to such Cuban flights? Has the U.S. military scrambled aircraft in response to Cuban military aircraft flying north of Cuba's 12 mile territorial sea? If so, how frequent has the U.S. response been?

BACKGROUND

Negotiations between the Cuba and United States' governments to establish relations were underway as of February 24, 1996. J. Sheehan, General, U.S. Marine Corps and Commander in Chief-U.S. Atlantic Command, (at the time of the shootdown), has lobbied to lift the embargo, before and after February 24, 1996, while on active duty and after retirement (1).

STATEMENTS OF FACTS AND QUESTIONS

1. *The Clinton administration remained silent in connection with a "calculated warning" by the Cuban government.*

Statement of Fact (SOF)

Castro had discussed BTTR flights with U.S. officials (2). Specifically, three weeks before the shootdown of February 24, 1996, Cuban air force Gen. Arnaldo Tamayo asked U.S. Navy admiral Eugene Carroll (who was in Havana as part of an American delegation to meet with leaders of the Cuban military) what he thought would be the United States' reaction if the Cuban air force shot down the BTTR airplanes. The admiral referred the question to the State Department and the Defense Intelligence Agency. The United States never responded to what Admiral Carroll has referred to as a calculated warning (3).

Questions (Q)

Why didn't the Clinton administration respond to Castro's warning? Why didn't the Clinton administration warn BTTR (4)?

2. *The Clinton administration had prior knowledge that Castro was planning an attack on Brothers to the Rescue airplanes, yet, it never informed BTTR.*

For political reasons, the Clinton administration is now trying to deport or "burn" a previously acquitted witness who can testify to the premeditation of this crime.

SOF: In January 1996 U.S. intelligence agencies spotted Cuban Migs test-firing air-to-air missiles and practice maneuvers to attack slow-moving aircraft similar to BTTR planes (5).

A witness to these maneuvers, Adel Regalado Ulloa, who fled to the United States in August of 1996, previously acquitted of sky-jacking, will be brought to trial again as a result of a political decision made by the Immigration Department.

Q: Why wasn't Brothers to the Rescue advised of the practice maneuvers?

Background Information: Chronology of events related to the murder

Radar sighting of MiGs take off. "Battlestations" alert placed at Homestead base shortly thereafter 3:00 PM

"911" call from Major Jeffrey Houlihan (6.a) (7)	3:16 PM
First aircraft is shot down	3:21 PM
Second aircraft is shot down	3:28 PM
Third BTTR aircraft crosses 24th parallel, Northbound	3:41 PM
MiGs make visual contact with the third BTTR aircraft	3:45 PM
MiGs positively identify the third BTTR aircraft as a light blue Cessna 337 (8)	3:47 PM
Third BTTR aircraft at 24:16:18", about 16 miles North of the 24th parallel (9)	3:49 PM
Third BTTR aircraft at 24-26' North and 082-27" West. About 26 miles North above the 24th Parallel in U.S. controlled airspace. The MiGs make visual contact for the third time. MiGs are ordered to suspend the mission. At this point the Cuban MiG was three minutes from U.S. shore (10)	3:53 PM

Background Information: Reaction Time of US Interceptors

The reaction time for an interceptor from Key West to reach the area is, if on "battlestations" alert: less than 5 minutes and, not on "battlestations" alert: less than 11 minutes (6.a).

3. The "miscommunication error" that cancelled the "battlestations" alert at Homestead has never been explained

SOF: The "battlestations" alert placed at the Homestead base was cancelled. According to a Report of Inquiry prepared by Rodney P. Kelly, Brigadier General, USAF, the decision to take the Homestead aircraft off battlestations alert was due to a "miscommunication error" (which has never been explained). According to Brigadier General Kelly, this "miscommunication error" did not affect the outcome of the event. General Kelly also stated that: "No evidence suggests that any US element had prior knowledge of hostile intent on the part of the Cuban forces." He also indicates that "Due to speed of events and location of the shoot down, US aircraft could not have responded to the incident in time to prevent loss of life"(11).

Q: What was the nature of this "miscommunication error"?

According to the above information on the chronology of the shootdown and the reaction time of the interceptors, the shootdown of the second aircraft might have been prevented. As a matter of fact, we are convinced that the take off of US interceptors by itself would have provided an immediate deterrent to Castro's action, since Cuba was also radar monitoring the event.

4. Response to a "911" call: ". . . we're handling it, don't worry" (6.a) (7)

SOF: According to sworn testimony in US Federal Court by US Customs Official Jeffrey Houlihan, his "911" call to the Tyndall Air Force Base in Florida included the following exchange: "What I told him was do you see the Brothers to the Rescue aircraft?" The Senior Director Technician replied "yes", that he did. I said "do you know what's going on with them today" and he said "yes, we've been briefed". And then said "do you see that primary aircraft, 500 knot primary" and he said "yes, we see it." I said "well, it looks like a MIG-23 to me heading directly towards the United States. I think that's important." And he responded yes, we're handling it, don't worry."

Q: What did all this mean? Was the "battlestations" alert lifted before or after this call?

Please refer to a letter by Howard G. DeWolf, Brigadier General, USAF, Director, Inter-American Region, dated September 5, 1996, to Congressman Dan Burton which indicates that "Department of Defense radars do not routinely and systematically track civilian U.S. aircraft operating in international airspace. Our air defense personnel were informed by a Customs radar operator of the MiGs closing on slower aircraft and replied that they had the aircraft on their radars. However, neither party knew that the two slow-moving aircraft were the BTTR aircraft nor were they aware of the Cuban Government's intentions." Please also refer to Mr. Basulto's letter of September 13, 1996 to Mr. Gil Kapen regarding the aforementioned letter from Brigadier General DeWolf for other inaccuracies and contradictions in said letter (12).

Also, please refer to a memorandum to the Secretary of Defense signed by Howell M. Estes III, General USAF, Commander in Chief, dated October 13, 1996, forwarding the Report of Inquiry prepared by Rodney P. Kelly, Brigadier General, USAF

(11), which indicates that NORAD, the FAA, CARIBROC and Customs were all tracking BTTR activity on February 24, 1996, and Mr. Basulto's response to this document dated February 19, 1997 which highlights certain inaccuracies and contradictions in this memorandum (13). Also note that US radars had been placed on alert several days before February 24, 1996 to follow BTTR's flights (ICAO report).

5. *U.S. interceptors were not deployed to deter MiGs in international waters, in contravention of standard operating procedure related to the "trigger line." Also, please refer to Item 7, below.*

SOF: According to sworn testimony in US Federal Court by US Customs Official Jeffrey Houlihan, it is standard operating procedure to deploy interceptors once Cuban MiGs cross the Cuban 12 mile territorial limit-the "trigger line" (6.b). Also, he indicated that the presence of MiGs in the area was uncommon (6.c).

Interceptors had been deployed on the morning of February 24, 1996 to deter Cuban MiGs in the area, hours before the BTTR aircraft took off in the afternoon.

Q: Why weren't U.S. Air Force interceptors deployed to deter the MiGs in international airspace? Why weren't Standard Operating Procedures followed?

6. *SOF:* BTTR was never informed of the radar sightings of the MiGs on February 24, 1996 (4). Similar calls had been made on numerous occasions in the past (6.d), and each call had taken less than 2 minutes. Previously, when advised of Cuban MiGs, BTTR airplanes had returned to their base.

Q: Why wasn't a simple call made during the period from 3:00 PM to 3:53 PM? Fifty three minutes of silence. Fifty three minutes during which Cuban MiGs hunted two BTTR planes, murdered their four occupants in international airspace, and chased the third plane to within three minutes of the United States. Why?

Was there any attempt by the Clinton administration to contact the Cuban authorities during these events?

And why now, a little over two years after the murder, the FAA instructs BTTR pilots to follow orders given by Castro's MiGs? Please note that this issue is being addressed by BTTR separately.

And why now, a little over two years after the murder, without any changes on the part of Castro's government, is the Clinton administration lifting the sanctions it reluctantly imposed on Castro after the crime? Why were the key sanctions never even implemented? (This subject is beyond the scope of this document.)

7. *There is evidence that substantiates that at least one of the MiGs in pursuit of the third aircraft did cross the 24th parallel.*

SOF: In the ICAO report, the United States has stated that there were no other small civilian aircraft in the area other than the BTTR aircraft and the Cuban interceptor MiGs. In the transcript between the MiGs and the Cuban controllers, the MiGs positively identified the third BTTR aircraft three times, just as it had done with the other two aircraft, prior to shooting them down. Yet, it is interesting to note that in paragraph 1.1.47 of the ICAO report, the U.S. accuses Cuba of chasing a non-existing (non-existing because the U.S. agrees that there were no other aircraft in the vicinity) light blue and white Cessna # 337 and Cuba agrees that the Cessna it was chasing was not the third BTTR aircraft. This bizarre explanation adopted by both the United States and Cuba appears to be a convenient position for both parties to take, to cover up the fact that the Cuban MiGs crossed the 24th parallel (14).

In conclusion, when the U.S. Air Force radar print screens and location data are cross referenced with the transcripts of the Cuban MiGs with their controllers, both documents concur that the third BTTR aircraft was well to the North of the 24th parallel and that the Cuban MiGs were within 3 minutes of reaching the United States.

The recorded communications of the two MiGs in pursuit of the third BTTR aircraft indicate a sighting of a Cessna 337 light blue or light blue and white at 3:47 and at 3:53 PM, respectively (15). At that time U.S. radar (on alert that day) places the third aircraft 26 nautical miles North of parallel 24 (16).

Also, please refer to item 6 of the Testimony of José Basulto before the Subcommittee on the Western Hemisphere on September 18, 1996, specifically items 6 d and e which state: "... Resist the Judge's petition to produce in court the recordings of the radio communications of the MiGs pilots and their controllers, already heard by ICAO investigators, and partially released to the United Nations. When finally obtained, these recordings provided BTTR with evidence that the MiGs pursued the last remaining BTTR aircraft above the 24th parallel and to within three minutes of the U.S. When we were finally allowed to hear the tapes, we were given access to only two of the four tracks of the tapes" (17).

Q: Where, other than at the same location of the third aircraft, could the MiGs be, if, according to U.S. sources, there was no other aircraft in the area?

8. SOF: *The US Air Force does not allow BTTR to review the raw radar data held by it; it has only shown a computer depiction of the events.*

Q: Why?

9. SOF: *A meeting between U.S. and Cuban military officials regarding the shootdown was held on March 2, 1996 in New York (18).*

Q: What was the nature of this meeting?

10. SOF *Phase I of the report on the shootdown of Brothers to the Rescue aircraft issued in April of 1997 by the Department of Defense Inspector General was classified "Top Secret." We understand that Phase II of this report was recently completed, is also classified top secret, and could be made available to Congresswoman Ros-Lehtinen.*

Q: What procedures can BTTR undertake to gain access to this report?

11. Q: What "information" did Juan Pablo Roque give the FBI on BTTR's intentions for February 24, 1996 and what actions were taken based on this information (4) (18)?

12. For certain answers regarding how the survival of one plane foiled Castro's plot please refer to article on this subject (19).

References to Dossier entitled "The Downing of Brothers to the Rescue Aircraft by Castro's MiGs:"

For more information we invite you to visit our web site at: www.hermanos.org.

(1) Tab 10. Letter of October 15, 1995 by General J.J. Sheehan, U.S. Marine Corps, Commander in Chief, U.S. Atlantic Command, to Senator Sam Nunn, Senate, Committee on Armed Services

Diario de las Americas, March 14, 1998,—Est en Cuba ex-jefe de la OTAN— (Former Chief of NATO (General J. Sheehan) is in Cuba)

(2) Tab 4. The New Yorker, January, 1998, "Backfire"

(3) Tab 14. CNN transcript of news show 9:25 am ET Feb. 25, 1996

(4) Tab 3. The Miami Herald's Tropic Magazine, Feb. 16, 1997, "Brothers Unrescued"

(5) Tab 15. Time Magazine, Oct. 28, 1996, "Clinton's Cuban Road to Florida"

(6) Tab 5. Transcripts of sworn court testimony by Major Jeffrey Houlihan. Major Houlihan was at the time of this testimony U.S. Customs Service, Senior Detection Systems Specialist at March Air Force Base, California. Formerly he had been with the Air Force. First assigned to radar control duties in January of 1982.

(6.a) Pages 469-471

(6.b) Pages 482-484

(6.c) Pages 372 and 553-554

(6.d) Pages 429-430

(7) Tab 20. The Miami Herald, July 3, 1996, "U.S. Radar Official: 911 call"

(8) Tab 6. Exhibit G-2, pg. 10, 11 and 12.

(9) Tab 7. U.S. Air Force screen prints.

(10) Tab 6. MiG's Communications transcript. Exhibit G-2, pg. 13 for event time and U.S. radar data from radar site B94, for location.

(11) Tab 9. Report of Inquiry prepared by Brigadier General Rodney P. Kelly

(12) Tab 8

(13) Tab 9

(14) ICAO Report pg. 13, par. I.1.47, Tab 1

(15) Tab 6. Exhibit G-2, pg 12

(16) Tab 7. Site J07, pg. 4, and Site B94, pg. 8

(17) Tab 21. Testimony of José Basulto, President of Brothers to the Rescue before the Subcommittee on the Western Hemisphere. September 18, 1996.

(18) Tab 19

(19) Tab 18. The Wall Street Journal, March 26, 1996, "The Plane that Foiled Castro's Plot"

INSPECTOR GENERAL,
DEPARTMENT OF DEFENCE,
Arlington, VA, December 28, 1998.

Hon. ILEANA ROS-LEHTINEN
House of Representatives,
Washington, DC, December 28, 1998.

DEAR CONGRESSWOMAN ROS-LEHTINEN: This is in response to an August 31, 1998, letter to the Attorney General of the United States, signed jointly by you and Con-

gressman Lincoln Diaz-Balart, requesting answers to several questions posed by Mr. Jose Basulto regarding the shootdown of two Brothers to the Rescue aircraft by the Cuban military. The Department of Justice forwarded a copy of your letter to this office for additional response because many of Mr. Basulto's questions (all but questions 9, 11, and 12) refer to the actions of Department of Defense (DoD) elements in connection with the shootdown incident.

This office has conducted an exhaustive review of the shootdown incident and issued two reports: Report Number PO 97011, "The DoD Response to the Brothers to the Rescue Incident Phase 1," March 28, 1997; and Report Number IR 98-609, "The DoD Response to the Brothers to the Rescue Incident—Phase 11" August 10, 1998. Copies of both reports were delivered to the chairman and ranking minority members of multiple committees of the U.S. House of Representatives and the U.S. Senate. In addition, on September 14, 1998, members of my staff met with both Ms. Yleen Poblete, of your subcommittee staff, and Mr. Mike Delph, Professional Staff, House Committee on Government Reform and oversight, chaired by Congressman Van Burton, to discuss Phase 11 report and questions raised by Mr. Basulto.

The two reports address all of the DoD-related issues raised by Mr. Basulto's question. The two reports, classified Secret and containing Sensitive Compartmented information, are available to you or an appropriately cleared member of your staff by contacting the security officer of one of the congressional committees. We do not have unclassified versions of the reports which could be shared with Mr. Basulto. Additionally, we note that national security classifications prohibit us from providing detailed responses to many of the questions raised by Mr. Basulto.

We trust that this information is helpful and we regret that we are unable to provide a more comprehensive response to the complicated and sensitive questions raised by Mr. Basulto.

A similar letter has been provided to Congressman Diaz Salart. If we may be of further assistance, please contact me or Mr. John R. Crane, office of congressional liaison, at (703) 604-8324.

Sincerely,

ELEANOR HILL, *for Inspector General.*

Mr. MCCOLLUM. Mr. Iglesias, you are recognized.

**STATEMENT OF ARNALDO IGLESIAS, VICE PRESIDENT,
BROTHERS TO THE RESCUE**

Mr. IGLESIAS. Good morning, Mr. Chairman and members.

I was in the plane with Jose Basulto and have submitted a statement. However, I would like to concentrate on one aspect of this incident which proves the premeditation of the murder of these four men, three of them American citizens, and that involves activities of a Castro spy, Juan Pablo Robles.

Mr. Robles befriended us at Brothers to the Rescue, and we took him in as a friend and as a collaborator in our humanitarian mission. It turns out that he was acting on the orders of Fidel Castro to infiltrate our group and to participate in the downing of these two planes.

You might have read on the day before the shootdown, Juan Pablo Robles returned to Cuba, leaving his wife in Florida. Castro's plan was to shoot down all the three planes and have Juan Pablo Robles appear in Cuba and confess to a lie, that is, that the Brothers to the Rescue were carrying on various activities on the island of Cuba. Castro's plan was thwarted because our plane survived and we were in a position to disprove anything Mr. Robles would have said about that. His involvement shows that this was a well-orchestrated plan to shoot down the planes and thereafter blame the Brothers to the Rescue for having undertaken illegal activities in Cuba.

I am deeply grateful to you and this subcommittee for granting me this opportunity and to appear before you today. I thank you very much for it.

Mr. McCOLLUM. Thank you very much, Mr. Iglesias.
Miss Iriondo, you are recognized.

**STATEMENT OF SYLVIA G. IRIONDO, CO-OWNER AND
PRESIDENT, TARAF & IRIONDO CORPORATION, REALTORS**

Ms. IRIONDO. Good morning, Mr. Chairman.

Mr. McCOLLUM. You need to turn the switch on. Thank you.

Ms. IRIONDO. Good morning, Mr. Chairman and members of the committee. I am most grateful for this opportunity to highlight for you my firsthand account of Fidel Castro's savage attack on U.S. Civilian aircraft over international waters on February 24th which claimed the lives of four courageous men: Armando Alejandro, Jr., Carlos Costa, Mario de la Peña and Pablo Morales. Congress has always throughout history demonstrated profound solidarity with the suffering Cuban people. Today's hearing is yet another example of that steadfast commitment.

On that fatal day of February 24th, we were eight aboard three small planes in a routine humanitarian mission to look for men, women and children, who all too often flee Cuba in makeshift rafts in search of freedom. This mission over the Florida Straits was no different to the more than 2,000 flights that Brothers to the Rescue had previously undertaken to save lives, with one exception, Castro was intent on annihilating the three aircraft on that precise day.

It is often that I close my eyes and find myself recalling the humming of the tiny Cessna as we searched through clouds, worried about the two sudden bursts of smoke over the horizon that had just taken the lives of our colleagues. I recall clutching my husband's hand, while our pilot, Jose Basulto, and Arnaldo Iglesias pleaded on the radio for the two Brothers to the Rescue pilots to respond.

At 3:28 p.m., Fidel Castro's MIGs had destroyed two U.S. Civilian aircraft over international waters. This unprovoked and unjustified slaughter is unprecedented in American history.

In a radio transmission to their base, Castro's pilots gloated over their heinous deed. A stunned community reacted with indignation and disbelief. Castro's tyranny had managed to reach out from the island prison to senselessly take American lives.

Shortly after the shootdown, President Clinton met with the mothers, wife and family members of the four murdered young men. The President promised then that he would not rest until the assassins were brought to justice.

Three years have elapsed since this crime occurred. The culprits are known to the United States. The International Civil Aviation Organization, after a protracted inquiry, determined that, as American radar had shown, the crime had taken place in international airspace. Castro himself acknowledged that he had given the order to kill in a Time Magazine article.

Following the London detention and indictment of Chile's General Augusto Pinochet, eight Members of Congress appealed to President Clinton "to initiate similar efforts to bring to justice the Cuban dictator" for the murder of Armando, Carlos, Mario and Pablo.

To date, we know of no serious steps taken by the administration to indict Castro and his accomplices for the obvious cold-blooded, premeditated murder.

For those who affirm that Castro is no longer a threat to the security of this country, I question how they view the downing of United States unarmed civilian aircraft over international airspace less than 90 miles from our shores. What other crimes must we wait to witness before appropriate action is taken to bring Castro to justice?

Is the message to the Cuban regime that we look the other way when Castro opts to export his terrorism and threaten the safety of Americans? What else does it take to call a murderer by his name?

Today, out of respect for the memory of our murdered brothers and in the spirit of justice that characterizes this great Nation, I implore this committee, Mr. Chairman, to take all steps necessary to indict Fidel Castro for the murder of American citizens in international airspace.

Thank you, Mr. Chairman and members.

Mr. MCCOLLUM. Thank you very much, Ms. Iriondo.

PREPARED STATEMENT OF SYLVIA G. IRIONDO, CO-OWNER AND PRESIDENT, TARAF & IRIONDO CORPORATION, REALTORS

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It is often that I close my eyes and find myself recalling the humming of the tiny cessna as we searched through clouds, worried about the two sudden bursts of smoke over the horizon, that had just taken the lives of our colleagues. I recall clutching my husband's hand, while our pilot Jose Basulto, and Arnaldo Iglesias pleaded on the radio for the two brothers to the rescue pilots to respond. At 3:28 p.m., fidel castro's migs had destroyed two U.S. Civilian aircraft over international waters. this unprovoked and unjustified slaughter is unprecedented in american history.

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Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Houlihan, if you would rejoin us for the questioning now, it would be appreciated.

I will recognize myself for 5 minutes of questioning under the committee rules, and then each of the other members, Mr. Scott and so forth, may be yielded time.

I want to make one observation, Mr. Basulto, and that is that this committee will do everything it can to get the questions you have raised answered. Some of those questions, as you know from our discussions I think through counsel and staff, have to await the outcome of this prosecution of the 14 that is going on in Miami now. Some of them, it probably will require subpoenas, and that may require even another committee to do that, because we are not designated with that power, but other committees are. I will do whatever it takes in my power to make sure those questions are answered.

Mr. Houlihan, I want to ask you a couple of quick questions for clarification. You earlier described for us very, very explicitly how the shootdown appeared from a radar perspective as you manned your operations with the Customs Service. I am curious as to why you think there was no warning provided to the Brothers to the Rescue that morning of the shootdown once the MIGs appeared. Not from you so much but from anyone else as that morning progressed. There appears to have been no radio contact from our Air Force or from any official to them about what you had observed, even after you had made some initial contact wondering what is going on out there. Could you explain why there wasn't any, or are you surprised there was at some point no communication?

Mr. HOULIHAN. At the time that this happened, I was not aware that the Brothers to the Rescue maintained radio contact with their aircraft at all times when they were out. I wish to God I had been. I would have called their hanger and asked them, told them what was going on so they could have radioed it and sent the people home.

Why no one else did that? Normally, that sort of a service would have been provided by the FAA. I am not sure they knew enough about what was happening.

Mr. MCCOLLUM. What about the idea historically that our Air Force scrambles planes when we see foreign planes within so much distance of the United States? Is there some rule that you are familiar with—maybe I am asking the wrong person here, but you are the only one I have got to ask this of—but is there some rule of engagement or some rule that says we send up our planes, we send interceptors or whatever, and were, to your knowledge, the

MIGs far enough off the coast of Cuba to justify normally that sort of mission?

Mr. HOULIHAN. Well, Mr. Chairman, I am a member of the United States Customs Service. I don't set the policy for the Department of Defense as to when they do or do not launch on targets coming toward the United States.

Mr. MCCOLLUM. I understand that.

Mr. HOULIHAN. I can answer it from my own personal opinion, from my own personal experience.

Mr. MCCOLLUM. Please do that. I realize it is not the Department of Defense's answer, it is your personal answer.

Mr. HOULIHAN. The area that is in question today, it is a very high threat smuggling area. That is somewhere we oftentimes see aircraft coming up into the United States. At the same time, it is a critical area for the military, simply because aircraft coming out of Cuba, you can understand, of course, would be considered a problem for the United States.

In my experience prior to this shootdown, normally the Air Force launches immediately upon seeing anything coming out of that area.

Mr. MCCOLLUM. And you did have quite a bit of experience—in fact, you testified to us earlier that you had never seen the MIGs scramble in response to previous Brothers to the Rescue flights, or I think you said you had never seen any MIGs up there in the 2 years that you had been observing this, right?

Mr. HOULIHAN. Up to that time, yes. We had only been in control of that particular area for the last 2 years. In that time I had never seen a MIG fly.

Mr. MCCOLLUM. The interesting thing is when you described your call to Tyndall Air Force Base, and I think you did, maybe not before us, but some place I read you described it as a 911 call, but that is essentially what you did, I think, what do you think—how do you think Tyndall felt or interpreted your first contact with them?

Mr. HOULIHAN. Well, it is rather difficult for me to say how they must have felt. I know the response that I got when I talked to them. I did ask if they saw what was going on, and I will admit that I was probably a bit abrupt with them, perhaps even a little sarcastic with them, saying that I see a MIG heading toward United States airspace. I think that is kind of scary. I think people would expect you to do something.

Mr. MCCOLLUM. Yes. The point is that it is your personal view again, your reaction at the time, as well as now, that you would have expected the Air Force to have been responding at that point, because they were seeing the same thing you were, right?

Mr. HOULIHAN. Yes, sir. To understand specifically exactly what I was thinking at the time, I knew that there was nothing I could do to help these people. I wish that there had been something, and I thought the only people around who did have the capability to do anything would be the Air Force.

Mr. MCCOLLUM. From what I have observed and what you said today, what you did was commendable. Your reaction was normal, and the reaction of the Air Force to this is not commendable and

not normal. But, nonetheless, I appreciate your being here today and saying what you did.

My initial round of time has expired. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Houlihan, did I understand you to say that the first—you noticed the first MIG contact before the aircraft had entered into Cuban airspace?

Mr. HOULIHAN. Yes, sir.

Mr. SCOTT. In prior cases, had you seen military responses to situations like this?

Mr. HOULIHAN. Specifically have I seen the military respond to aircraft inside of Cuban national airspace?

Mr. SCOTT. No, they did not send any aircraft to assist Brothers to the Rescue. Have you seen military—United States military come in to assist civilian aircraft in situations where they may have been threatened?

Mr. HOULIHAN. I have never seen a situation where civilian aircraft were threatened.

Mr. SCOTT. Okay. Mr. Basulto, had you been warned about the risks of flying into Cuban airspace?

Mr. BASULTO. Warned by whom?

Mr. SCOTT. Anybody. United States, State Department, military, anybody?

Mr. BASULTO. I don't need a warning on that. I know it is dangerous, and I have not been warned by anybody in the Federal Government to this respect.

Mr. SCOTT. Mr. Fowler, what is the law about flying over Cuban airspace? What risks should pilots expect?

Mr. FOWLER. If you fly over Cuban airspace, I think what you can expect is they will tell you to leave Cuban airspace or they might force you to land in Cuban airspace, but international law does not allow the destruction of a plane under those circumstances.

Mr. SCOTT. What does international law allow?

Mr. FOWLER. Either tell them to leave the Cuban airspace or they can force the plane to land, but not commit murder.

Mr. SCOTT. If this is a crime over international waters, where is the jurisdiction for the crime to be tried?

Mr. FOWLER. In my opinion, this crime was committed on the high seas, and the applicable statutes that I mentioned, 8 United States Code 111, as well as 8 U.S. Code 2332, the Anti-terrorism Act, both provide for jurisdiction in the United States. You can bring an action against Fidel Castro in the United States.

Mr. SCOTT. And is there any statute of limitations on bringing an indictment in these cases?

Mr. FOWLER. No, not to my knowledge.

Mr. SCOTT. No further questions, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Scott.

I will go to committee members first. I have to do that.

Mr. Chabot, do you have any questions?

Mr. CHABOT. No.

Mr. MCCOLLUM. Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman.

Mr. Fowler, on December 17th, 1997, a judgment was rendered against Cuba by U.S. District Court Judge James King. Can you describe that judgment?

Mr. FOWLER. It is a judgment for \$187 million against the government of Cuba for murder of the three U.S. Citizens. It was brought on behalf of the families of these three United States citizens.

Mr. ROTHMAN. Was a trial held prior to the issuance of the judgment?

Mr. FOWLER. You cannot just take a default judgment without providing evidence, so a full evidentiary hearing was brought out, all the people testified, and, upon that evidence, the judge rendered his decision. It is a civil decision, not a criminal decision.

Mr. ROTHMAN. The cause of action was under what law? The admiralty laws?

Mr. FOWLER. Not admiralty laws. I will have to get the actual statute. They were civil actions under that case.

Mr. ROTHMAN. For any of the panel members, is it your opinion that there was a conspiracy between members of the Cuban government and members of the United States Government that permitted these murders to occur?

Mr. BASULTO. I believe there was an understanding of both parts, and who was it that had that understanding, undertaking, I don't know. That is what I am looking for.

It would have not been possible for Castro to act unless he had all those defense mechanisms plugged out the day he acted against us. I don't think they would have taken that action on their own unless they knew that nothing was going to come out from it. There is enough evidence, I believe, that we have presented in this dossier we have here that tells you and the questions tell you what we are after. We believe—I believe, there was an understanding of parties.

Mr. ROTHMAN. Mr. Basulto, I believe you testified earlier that something occurred or something lasted approximately 53 minutes.

Mr. BASULTO. Correct.

Mr. ROTHMAN. Was that the attack by the Cuban MIGs upon the three aircraft that lasted 53 minutes, or were you referring to something else?

Mr. BASULTO. The 53 minutes I established at the time that the second pair of MIGs that came out after me were told to abort the mission and return. At that time, I was about 30 miles, 30 miles west of Key West.

Mr. ROTHMAN. So let me see if I understand your testimony. For 53 minutes, you were chased a few miles out of the American airspace but in international airspace by two Cuban MIGs, and no U.S. Fighter aircraft were sent to intervenor to investigate?

Mr. BASULTO. Correct. And we have had a previous experience in 1992, which established a protocol, a procedure to be followed by which we were to provide the Cuban government our flight plan, our intentions for the day, and we did that on that day. On that day, because of the MIGs that came out, and the U.S. Air Force sent F-four's to clear the problem—

Mr. ROTHMAN. That was in 1992. But that did not occur in 1996?

Mr. BASULTO. Correct.

Mr. ROTHMAN. Mr. Houlihan, can you confirm approximately or exactly the duration of the attack by the Cuban MIGs upon these three aircraft?

Mr. HOULIHAN. It would depend entirely on exactly when you begin counting the attack.

Mr. ROTHMAN. Well, what is the longest period and what is the shortest period of time you can estimate the attack occurred?

Mr. HOULIHAN. If you count it from the beginning of the first visual identification pass, which happened about 16 minutes after the hour of 3, and then the last Cuban aircraft that I saw, and I should make it plain that they were in and out of my radar contact and that I and no one at my facility saw an aircraft chase Mr. Basulto's aircraft, but it was almost probably 40 minutes later that I saw the last one. I am estimating now. I would have to check my records specifically to find out exactly.

Mr. ROTHMAN. So the last MIG headed back to Cuba?

Mr. HOULIHAN. Yes, sir.

Mr. ROTHMAN. Thank you. No further questions at this time.

Mr. MCCOLLUM. Because the rules of the committee do not provide for our guests to ask questions, we often yield to them. I am going to recognize Mr. Chabot, who I think is anticipating doing that.

Mr. CHABOT. Mr. Chairman, I want to thank you for having this very important hearing.

I would like to yield my time to the gentlelady and the gentleman from the State of Florida. If we go into a second round, I would also, although I may not be here, I would yield my time to the other of the two, depending on how you want to handle the time.

Mr. MCCOLLUM. Thank you, Mr. Chabot.

Ms. Ros-Lehtinen, you are recognized.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman and Mr. Chabot.

Thank you, Mr. Houlihan and all of the panelists, for the excellent testimony.

We have had the opportunity of listening to you in previous testimony and in closed hearings as well, and I think, as all of us heard today, you were alarmed by the presence of the MIGs and then startled was the word you used when you saw the shootdown. You followed proper procedures, called others about the sightings. You asked, did you see what I saw? Should we call search and rescue out? And the response was, it is okay; we will take care of it.

Unfortunately, as we have since found out, the "we will take care of it" meant we will do nothing. We had stated that response was obviously not satisfactory to you.

So we have to ask why was Brothers to the Rescue planes not warned about the presence of the MIGs, and I wanted to ask you about the standard operating procedures, and you have already touched on that.

Could warnings to pilots not be issued once they are in the air, and what was the standard operating procedure regarding radar sightings and communications of such sightings prior to the shootdown? Did you consider the request to monitor Brothers to the Rescue unusual and would such a request indicate an anticipated confrontation between the MIGs and Brothers to the Rescue?

Mr. HOULIHAN. To handle your questions in reverse order, I—

Ms. ROS-LEHTINEN. I want to thank the staff person for putting up this quote. I would like to have everyone read it.

It says, the absence of any warning to the Brothers to the Rescue, Jeane Kirkpatrick, about the lack of communication by the administration officials to the U.S. Military and to Brothers to the Rescue, she said, Ambassador Kirkpatrick said, non-notification is absolutely inexplicable.

We wanted your thoughts on that.

Mr. HOULIHAN. Under the normal routine of notifying aircraft of dangers, any kind of flight dangers, it would have happened through the FAA flight service station.

My understanding—of course, this is just my opinion on this—is the FAA flight service stations and the FAA itself had no knowledge this was going on, beyond the fact that the Brothers to the Rescue had intended to fly down toward Cuba. The fact the MIGs were out operating, I don't believe they knew that. I know I didn't tell them. Unless someone else somewhere along the chain did, there would have been no way for them to know it.

Our own procedures at the facility that I operate at, we had nothing in place that would provide us with any sort of guidance on who we should contact in this sort of situation. We never faced a situation like this before. I had never even personally considered that something like this could have happened.

Understand, please, that my role, my job for the U.S., is to stop drug smugglers. I concentrate very carefully on that area because of that problem. Our procedures all revolve around handling that.

We have always had very cordial relationships with the Brothers to the Rescue as an organization. They used to call us whenever they would go out to fly to let us know they were in the area. They were cognizant of how important that area was to us, and we provided them any kind of help we could. The FAA, oftentimes they asked us to do specific things for them. It is a courtesy, one agency to another. If it is reasonable, within our capability to do, we will do it.

Ms. ROS-LEHTINEN. Thank you.

We know the ramifications of these miscommunication errors, cancelling battle station alert, the ramifications of it were the deaths of these four men on February 24th. Could such an error also lead to an attack on the United States without countermeasures to prevent it?

Mr. HOULIHAN. That is well beyond my ability to really speak to. I am not in the Department of Defense anymore.

Ms. ROS-LEHTINEN. Thank you.

If I could ask Mr. Fowler and Mr. Basulto and any others who would like to answer, if you could ask one official of the U.S., whether that is President Clinton or an official of the FAA, any agency, one question, or get from them one piece of evidence, whether it is a transmission that was made, a memo that was issued, a briefing that was held, who would that person be and what would that question or that piece of paper be or that radio transmission be? Mr. Basulto.

Mr. BASULTO. I would like to ask Sandy Berger, who gave the order to stop the defense mechanism that would have saved the lives of those pilots.

Ms. ROS-LEHTINEN. What kind of—do you believe that that was a verbal discussion that had taken place?

Mr. BASULTO. I believe there was a mechanism, has been stated before, and the mechanism didn't work that day because somebody stopped it. I want to know who stopped it.

Ms. ROS-LEHTINEN. Mr. Fowler?

Mr. FOWLER. I would ask President Clinton why he has not brought an indictment against Fidel Castro when the evidence is so clear and the law is so clear. That is who I would talk to.

Ms. ROS-LEHTINEN. Thank you for the time, Mr. Chairman.

Mr. MCCOLLUM. Thank you.

I am going to take a second round, and in that process I will yield my time to Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Mr. Chairman, for your generosity, your kindness, and also the committee.

I would like to ask, Mr. Houlihan, you had significant experience in the Air Force, did you not, before you joined Customs?

Mr. HOULIHAN. Yes.

Mr. DIAZ-BALART. Could you explain a little bit about your experience in the Air Force?

Mr. HOULIHAN. I was an air defense controller for the North America Air Defense Command. My last assignment before leaving the Air Force was at the 26th Air Division in the West, out in California.

Mr. DIAZ-BALART. For how long were you with the Air Force?

Mr. HOULIHAN. For just under 5 years with the Air Force when I resigned.

Mr. DIAZ-BALART. You made reference during your testimony to, in your experience, the normal practice of the Air Force with regard to launching U.S. Interceptors upon the sighting of aircraft from Cuba. Could you go into a little more depth of your experience of Air Force practice, normal Air Force practice, regarding the launching of our interceptors when aircraft are viewed leaving Cuba?

Mr. HOULIHAN. Let me clarify that this is purely my experience, that the Air Force doesn't consult with me as to what they do for their rules of engagement.

My experience prior to this incident was that any aircraft that popped up in that area, at any speed, they would launch on it immediately.

Mr. DIAZ-BALART. Thank you.

Mr. Basulto, could you explain the circumstances surrounding the flight that you were involved in in 1992 when interceptors were sent and you were protected?

Mr. BASULTO. Sure. It was the first encounter we ever had with Cuban MIGs. And at the time I was not flying, I was at home, and I received a call from the FAA letting me know that MIGs were seen in radar in the area where our aircraft were assisting a raft. At that time, they asked me, what do we do? I said, you better call the Air Force or do something about it, because there is nothing I can do. I was, of course, concerned about them. I had communica-

tions via cellular with the aircraft. I know that the Air Force launched, they went where the airplanes were, and the MIGs retreated.

Mr. DIAZ-BALART. This is simply because there was a visual sighting by an aircraft of Brothers to the Rescue of a humanitarian purpose?

Mr. BASULTO. That was the simplest thing done that day. That was produced 2 days before the developing of a protocol, a mechanism under which Brothers to the Rescue would operate thereafter to guarantee safety, which included filing a flight plan to be conveyed to Cuba, the name of the pilots, and everything we were going to do the day of the mission. The day of the shootdown, that flight plan and procedure was followed.

Mr. DIAZ-BALART. Was followed by brothers to the Rescue?

Mr. BASULTO. Yes.

Mr. DIAZ-BALART. Your understanding of that protocol, was it included also on the part of the Air Force and the government of the United States if need be, as in the incident in 1992, interceptor aircraft to protect you if MIGs appeared?

Mr. BASULTO. That is why we agreed to the protocol. The protocol included sending information on the pilots' name and the mission itself, and we were assigned a discrete transponder code, namely that our airplanes could be singled out on the radar in Cuba, which airplane was where and who was flying that airplane. We followed that to the letter that day.

Mr. DIAZ-BALART. Thank you.

Mr. MCCOLLUM. Thank you very much, Mr. Diaz-Balart. We appreciate that.

Mr. Scott.

Mr. SCOTT. I have no further questions, Mr. Chairman, other than Mr. Houlihan, are you represented by counsel?

Mr. HOULIHAN. I have a Customs' attorney here advising me, yes.

Mr. SCOTT. Could you identify him for the record, please?

Mr. BASHAN. My name is Steven Bashan. I am the Associate Counsel for Enforcement for Customs here in Washington.

Mr. MCCOLLUM. Mr. Rothman.

Before we dismiss the panel, I would like to clarify a couple of points very quickly.

One, Mr. Fowler, we have—I heard Mr. Diaz-Balart in his opening comments refer, and I think you did, too, to the Time Magazine article statement of—the interview with Fidel Castro. We put that up here on the chart. I will not repeat it all because Mr. Diaz-Balart read that statement earlier from the interview. But it seems very clear in that statement that Fidel Castro has admitted his complicity in this matter.

In your professional opinion, would that statement that appears to be an admission be admissible in a Federal Court in a criminal case charging Mr. Castro with murder in this case?

Mr. FOWLER. Mr. Diaz-Balart is a former prosecutor. His opinion on that was absolutely correct. I think it can be used, not alone. I think you have to bring in a witness or in cross-examination. But that statement can be used against Fidel Castro to prove that he admitted to the crime.

Mr. MCCOLLUM. It is just incredible to me, and I guess it is to you from what you have said, that we would have that admission and what we know is other corroborative evidence here, and indict 14 other Cubans in connection with this, but this administration and this Justice Department has not indicted Fidel Castro. We have, as you have expressed, indicted Noriega in the past under a similar law provision. It just seems inconceivable that we have not done this. I don't think there is any justification for it.

Mr. MCCOLLUM. Ms. Iriondo, one last thing I would like to ask you. That is, what has the failure to indict Castro in these circumstances meant—the failure from the May 7 indictment of the 14 others, the fact that we didn't indict him as part of the group, what effect has that had on the Cuban American community in Florida?

Ms. IRIONDO. I think it is the wrong message. It sends a message that we will look away when it refers to the dictator, Fidel Castro, and it reflects a double standard, a huge double standard. I think that 3 years have been enough time. All the data, all the facts are there. That is why we are here today, to urge this committee to take all steps necessary to indict Fidel Castro for the premeditated murders of American citizens in international air space.

Mr. MCCOLLUM. Well, that is why all of us, I think, are here today, is to encourage the right of justice to occur. And I am going to dismiss the panel and close by making the comment, and then I will yield to Mr. Scott, that it strikes me that the only power to indict him rests not in this committee but it rests in the President and in the Justice Department and the U.S. Attorney's Office in Miami or wherever.

Mr. Scott, I yield.

Mr. SCOTT. My colleague from New Jersey had one additional comment.

Mr. MCCOLLUM. Mr. Rothman, certainly.

Mr. ROTHMAN. Thank you, Mr. Chairman.

I had initially declined your offer to speak, but I did want to say one thing in conclusion as we bid the panel thank you and farewell—two things.

Number one, I want to thank you for coming to testify and providing us with the information with which we will be able to draw our conclusions as elected representatives here in America about what is the fair and lawful course of action that our government should be taking with response to the killings of these American citizens. We will analyze your evidence and your testimony very carefully.

And I did want to personally extend my respect and gratitude to each and every member of this panel for the courage that you have shown in your various capacities, Mr. Houlihan and the members and supporters of Brothers to the Rescue—Mr. Houlihan, for your courage in coming forth today in telling the truth. It could not have been easy; and I am sure there are many, many pressures upon you to be silent or to restrict your testimony.

Mr. HOULIHAN. The truth is always easy.

Mr. ROTHMAN. Well, we appreciate it, and it is not always easy, and you have made it appear so. But I want to publicly congratulate

late you and thank you on behalf of the American people for your integrity.

I also wanted to thank the other members of the panel for fighting the last dictator in the western hemisphere who continues to perpetuate his totalitarianism upon millions and millions of human beings just beyond our borders, and it is your courage and it is your education and commitment that I want to acknowledge today and let you know that, as one Member of the United States House of Representatives, I stand behind you and what you are trying to accomplish. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Rothman. I think as the panel leaves that we all echo those sentiments.

As I understand it, Mr. Basulto, Brothers to the Rescue still flies missions. The fact that this shutdown occurred has not deterred what you are doing.

Mr. BASULTO. No.

Mr. MCCOLLUM. Again, I think that shows the demonstration of courage of those who seek freedom and seek the return of freedom to Cuba as well as the rightness and justice that the American people have always believed our system of government should provide to our citizens and to our permanent resident aliens. In this case it is that justice that seems to be failing, and that is what we are here about today.

And I thank you all for coming. Again, Mr. Houlihan, for your coming in particular but for everyone here, Mr. Fowler, Mr. Basulto, Mr. Iglesias, and Ms. Iriondo. With that, we will go on to our second panel. Thank you very much.

Mr. BASULTO. Thank you, sir. I would like to submit this. Who will I give it to?

Mr. MCCOLLUM. You can give it to my counsel. The entire submission, without objection, will be placed in the record.

Is there any objection?

If not, Mr. Basulto's submission will be placed in the record. Thank you very, very much. You may give it to him as he steps down and gets it from you.

I understand that the Mayor of South Miami is in the audience, Julio Robaina. If he is here, I would certainly like to acknowledge his presence. He is. I do see him. We thank you for coming today and being with us.

We have our second panel today. Our first witness on that second panel is Mr. Jorge Mas. Mr. Mas is the Vice Chairman of the Cuban American National Foundation. He is also the founder, the chairman, and the CEO of MasTec, Inc., a telecommunications firm that employs more than 9,000 people throughout the United States, Spain, and Latin America. And it is a stock exchange company.

Although I don't own any of your stock, I have watched it going up, so it is doing well right now.

Mr. Mas is also actively involved in local child and religious charities, including the Mas Family Foundation which provides private scholarship monies to needy Cuban American students. Mr. Mas received both his bachelor's and master's degrees from the University of Miami. He is one of the great Cuban American leaders in our country today, and I greatly appreciate his joining us.

Our next witness on this panel is Mr. Lazaro Betancourt Morin. Mr. Morin defected from Cuba on April 16 of this year.

At the time of Mr. Morin's defection, he was serving as the captain of a special missions commando unit of the Cuban army. Mr. Morin's unit was responsible for protecting and rescuing Fidel Castro if he was ever detained in a foreign country. His specialty is anti-terrorism and special rescues. Mr. Morin has detailed knowledge of the command and control structure of the Cuban military and Castro's involvement with these operations like the shootdown of the Brothers to the Rescue planes.

And so, Mr. Morin, your presence here today is extremely important to us. You are an extremely important witness for all of what has been taking place, and we thank you for coming, especially today for this particular hearing.

Mr. McCOLLUM. Mr. Mas, both of you will be on the panel today, but we would ask you to proceed first with your testimony, and then we will turn to Mr. Betancourt Morin.

**STATEMENT OF JORGE MAS, CHAIRMAN AND CHIEF
EXECUTIVE OFFICER, MASTEC, INCORPORATED**

Mr. MAS. Thank you, Mr. Chairman. We are very grateful for the opportunity to testify today before this distinguished subcommittee, and I would especially like to thank the chairman, Mr. McCollum, for his leadership on this issue and for his persistence, despite the efforts of so many to sweep under the rug this tragic and criminal incident, in seeing that some measure of justice is realized and that those responsible for this cowardly attack on innocent civilians be held accountable.

Mr. Chairman, members of the subcommittee, for many months now we have been urging the Clinton administration to instruct the Justice Department to pursue an indictment of Fidel Castro and any other Cuban officials involved in the murders of these three American citizens and a U.S. resident, four good, honorable and patriotic men, in international air space 3 years ago.

We have cited over and over the ruling earlier this year of a Federal judge in Miami, Judge Lawrence King, who ordered that the families of those four martyrs for freedom begin to be paid from Cuba's blocked accounts in the U.S. the nearly \$190 million in damages he awarded them last year for a crime the judge called, and I quote, "monstrous" and heinous act of terrorism, and I again quote, that violated clearly established principles of international law.

Incredibly, the Clinton Administration has opposed this garnishment from Cuba's blocked accounts, and in a harsh rebuke the judge made a point that speaks to our general feeling about U.S. policy. In his ruling, a full copy of which I would like to submit for the record, he wrote, and again I quote, "The executive branch's approach to this situation has been inconsistent at best. It now apparently believes that shielding a terrorist foreign state's assets is more important than compensating for the loss of American lives." It bears reminding that Judge King's ruling came as a result of a civil procedure because we have yet to see the criminal charges levied that this case so dramatically demands.

While we are gratified for the expanded indictments several weeks ago against a ring of Cuban spies for their role in the murders of the four Brothers to the Rescue pilots, proof positive that this was a Cuban government conspiracy, a conspiracy to commit premeditated murder, still these are only Castro's errand boys. It is like arresting the corner drug dealer and letting the supplier go free. In reading the details of the plot, contained in the indictment, code named Operation Scorpion, devised and implemented by the Cuban DGI in Havana, it is simply inconceivable that such an elaborate and lethal conspiracy was not authorized and approved by Fidel Castro himself. Simply inconceivable.

And while this matter is fundamentally one of justice, it also has important foreign policy ramifications. As Judge King alluded to, how is it that we should treat terrorist states? Do we appease them? Do we allow them literally to get away with murder and thus further endanger the lives of American citizens? Or do we hold them accountable for their outlaw acts, imposing severe costs to them for their outlaw actions and thus prevent the future occurrences of such tragic incidents? I think the answer is obvious, Mr. Chairman.

It is greatly disconcerting, however, that at a time that cries out for justice and for bold leadership on the part of the U.S. Government, we are faced with an Administration that each day seems to be moving further and further away from the moral high ground when it comes to U.S.-Cuba policy and the plight of the Cuban people under Fidel Castro's totalitarian system. It is a policy that, as reported last week by the New York Times, seems to be one of accommodation and rapprochement.

Indeed, the Administration's response to the murder of the Brothers to the Rescue and recent handling of Cuban affairs leave a lot to be desired and raise very troubling questions about the course in which this Administration is headed.

I would like to take this opportunity, Mr. Chairman, to cite for the record yet another human drama unfolding in South Florida which underscores this point. It is the cruel and inhumane treatment suffered by at least two groups of Cuban rafters at the hands of the U.S. Coast Guard and the Border Patrol in which excessive force was used to impede their reaching shore, and abusive treatment was exercised to carry out this Administration's misguided U.S.-Cuba migration accord. These incidents, unfolding on live television, have infuriated our community and have been met with thousands of protestors in the streets of Miami. And while we welcome Attorney General Janet Reno's stated commitment to carry out a full investigation into this matter, we urge Congress to initiate its own investigation, as this cruel treatment of refugees fleeing oppression is unacceptable to all freedom-loving Americans and inconsistent with this great country's tradition of compassion for the victims of communism.

Mr. Chairman, I had the opportunity to speak earlier this week with President Clinton on this issue and express our concern with current trends in U.S.-Cuba policy, a policy in which the U.S. appears to have succumbed to the dictator's use of human lives as pawns in his attempts to extort political concessions from this country and maintain his grip on power. It is greatly troubling that

this accord, and its protection, have become an end in itself at the expense of the broader congressionally mandated policy of securing a return of democracy and human rights to the enslaved Cuban nation.

We pointed out to him how over recent months the Castro regime has launched a renewed offensive aimed at stamping out the peaceful dissident movement on the island, and we conveyed our steadfast opposition to any policy of engagement with the Castro dictatorship. We fear that the message being sent to the Cuban people, as well as to our allies, critical is one of failure in U.S. solidarity and resolve at this critical time for the Cuban nation. That it is further ironic this should be occurring at a time when Canada and the European Union are at last reconsidering their failed policies of appeasement.

We also emphatically conveyed, Mr. Chairman, our growing concern with reports out of Cuba that Fidel Castro may engineer yet another mass exodus to the United States as a means to alleviate mounting internal pressure and as an attempt to blackmail the Administration yet again into granting unilateral political concessions that will help Castro prolong his reign of terror, and that any such effort must be met with a forceful response by the U.S. Government, from a position of strength to prevent the mass loss of lives.

And, once again, we reiterated our call that Fidel Castro be indicted for the murders of Carlos Costa, Mario de la Peña, Armando Alejandro and Pablo Morales. That it is imperative that the United States ensure that the Castro brothers be punished for their crimes and not innocent men, women, and children. That we must again stand on the side of the victims, not the victimizer.

And the President's response to myself and others in that meeting, and I want to note that it was cited today in a Miami Herald editorial, that his response was as follows and I quote: "There is no question that they, the four fliers with the Brothers to the Rescue were flat out killed illegally. It was wrong. It was cold-blooded murder."

If that is the case, Mr. President, I ask, why not allow the Justice Department to pursue this indictment? It is time that the Clinton Administration get serious in its policy toward the last dictatorship in the Americas. The United States' stance against Slobodan Milosevic should indeed serve as an example that this great country must stand firm in the face of crimes against humanity, whether it be in the Balkans or in the Caribbean. Just as Kosovar refugees were forced from their homes and uprooted from the land of their birth, so too the Cuban people have met a similar fate at the hands of Castro's special brand of political cleansing. Therefore, we must ensure that our policy is directed to address what is at the root of this problem, as this human tragedy is bound to continue until our hemisphere is rid of Castro's dictatorship.

In short, the Castro regime is less a government than a vast criminal enterprise operating with impunity 90 miles from our shores, engaged in murder as a matter of policy, drug trafficking, money laundering, extortion, providing haven for U.S. fugitives from justice, fencing stolen U.S. properties on an international market, subverting its neighbors, conducting espionage against the

U.S. and planning sabotage against U.S. military installations in South Florida. The list goes on and on and on.

Mr. Chairman, the bottom line is that as long as we avoid forceful action against Fidel Castro, such as pursuing an indictment of him for these murders, we will be only inviting, inviting and awaiting, these tragedies that have had such a devastating impact on the lives of American citizens. As the leader of the free world, the United States must fulfill its moral obligation to stand on the right side of history with the victims of oppression and of crimes against humanity. History does not absolve tyrants, as Mr. Castro would have many believe. History instead vindicates those who stand for justice, freedom, and human dignity.

To conclude, Mr. Chairman, I would like to share with you the words of Nobel Laureate Elie Wiesel who, speaking at the White House earlier this year, warned about the evil of indifference and of the perils of appeasing tyrants. In a way, he said, to be indifferent to suffering is what makes the human being inhuman.

Our appeal to you today is that there are four families in South Florida who grieve for their lost loved ones and cry out for justice. That at the close of this millennium there are 11 million souls just 90 miles from our shores who endure tyranny. Please listen to their cries. Please stand with them in their desperate hour of need.

Thank you very much.

Mr. MCCOLLUM. Thank you very much, Mr. Mas, for that very eloquent and passionate statement.

[The prepared statement of Mr. Mas follows:]

PREPARED STATEMENT OF JORGE MAS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER,
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Thank you very much.

Mr. MCCOLLUM. Mr. Betancourt Morin, I believe you will testify with an interpreter's assistance in this case; and I would like for the interpreter to introduce herself to us. Could you please state for the record your name?

Ms. SANTELICES. Victoria Santelices.

Mr. MCCOLLUM. Thank you very much. If we could then, Mr. Betancourt Morin, if you would proceed with your testimony, we welcome it. Thank you very much for being here.

STATEMENT OF LAZARO BETANCOURT MORIN, A RECENT CUBAN DEFECTOR

Mr. MORIN. Thank you very much.

My name is Lazaro Betancourt Morin, 37 years old, former captain of the Special Mission Command. I am a specialist in anti-kidnapping technique and anti-terrorist technique. I served for 20 years in the Special Forces of the Minister of the Interior of the Republic of Cuba, among them, 16 years in the special troops—in the Special Forces of missions—

Ms. SANTELICES. I am sorry that I am going so slow because I just found out about all this terminology.

Thank you for the time.

Mr. MORIN. In the Special Forces of a special missions of the personal security which brings protection to the principal leaders of the government of Cuba.

As a result of my training, I was selected on seven occasions to become a member of the Security and Protection Division to the President, the Cuban President Fidel Castro, on his visits to the foreign countries beginning 1989 up to date where the assault group which I belonged had the irrevocable order of avoiding using any kind of force and means to any action in anywhere of the world against the life of President Castro, specifically any legal proceeding, an attempt to his life, of kidnapping him, or any court order.

Similarly, what is going on to the former Chilean President and Senator Augusto Pinochet, making all kind of efforts in the meas-

ures to prevent any of these occasion that as per them it would come from the Cuban American National Foundation directed by the CIA. Also as a result of a legal proceeding in anywhere of the world.

I took the decision of defect—I decided to defect after several disappointments as a professional, as a military, and as a human being, among them the disintegration due to the internal conflict in the Special Forces of the Minister of the Interior; the sinking, the criminal sinking of the towboat on March 13; the training that I received and the order to intercept these ships that were in the Cuban waters around 12 miles and that likely they couldn't make it because I have the chance to prove that whoever was coming there were in the minority, women and old people. Finally, the shootdown of two airplanes that belonged to the Brother of the Rescue by MIGs, Cuban fighters. On top, I also have the chance to see the difference in the lifestyle that the high-ranking government official had compared with the rest of the Cuban people and myself.

On occasion of the Second Summit of President of the Caribbean Countries in the Dominion Republic on a Sunday, April 16, I abandoned the security measures to which I belonged, and I went to the embassy of the United States in Santa Domingo, seeking political asylum, which was given to me, bringing me to this country on April 23.

Regarding the incident of the shootdown of the two airplanes by the Cuban MIGs, I testified that this order could have come only from the President of Cuba, Fidel Castro. Since like on previous occasions during his 40 years of regime, these main decisions that even they imply political risk, political consequence at international level like this one are always given by him.

And I can give an example since I could participate in 1986 up to April of this year in the main missions, in the main national missions by my combat group, accomplished that what happened on August 14, 1994, in the town of Boca Lemaleel, when a big group of people from that place occupied a ship with Greek flag whose name was Husar with intention of coming to this country. The people on that ship were principally women, children, and young people.

Immediately after the order that was given to my assault group and when we were in the place where the ship was with all the means ready for action, suddenly the President of Cuba, Fidel Castro, after meeting with the Minister of Interior and the Vice Ministry and the chief in command that were also present, he took the decision, the main decision and final of—

Ms. SANTELICES. One second, please.

Mr. MORIN. He took the main decision asking the people that were on the ship to come down with a technique shutting off water, food, and any external help trying to make them go back to the land like effectively happened. That is why on this occasion and also in other ones that I participate, I have the chance to prove and I testified that the maximum responsible and author of the decision of shut down these two planes was the President of Cuba, Fidel Castro.

Thank you very much.

Mr. MCCOLLUM. Thank you, Mr. Morin.

My understanding, Mr. Fowler, you have Mr. Regalado, the other defector who did not—could not appear, with today's testimony. It has been submitted for the record; and, without objection, it will be admitted.

I understand you want to highlight a couple of paragraphs from that testimony, and you are recognized to do that.

Mr. FOWLER. Thank you, Mr. Chairman.

Adel Regalado is involved in an ongoing investigation of this matter; therefore, he is not here to testify. But I received a statement from his attorney, and I am going to submit the statement into the record.

Mr. MCCOLLUM. Without objection, it is so admitted.

STATEMENT OF ADEL REGALADO, A RECENT CUBAN DEFECTOR

Mr. FOWLER. Thank you, Mr. Chairman. Let me read it.

Adel Regalado was one of four occupants of a small tourist airplane that left Cuba on the morning of August 16, 1996. The plane crashed at sea approximately 30 miles off the coast of Fort Myers, Florida. After the initial investigation was made by several law enforcement agencies, Regalado and two companions were brought into the United States and paroled in anticipation of a skyjacking accusation. The pilot of the plane claimed he was forced to leave Cuba after he realized that all four would be repatriated because they had not touched U.S. Soil.

The three men were indicted for air piracy and were appointed counsel to represent them before the United States District Court in and for the Middle District of Florida. The Honorable Henry Lee Adams presided over the subsequent trial.

The trial went on, and shortly after the criminal case acquittal an immigration detainer was placed on the three and notice to appear was served on each of the men on July 25. The first—the three first alerted the immigration court, the Honorable Richard McHugh presiding, of their intention to request political asylum. A formal application for asylum was filed in open court by each of them on October 17, 1997.

Contemporaneous to the immigration prosecution, Regalado, Bello Puente, and Reyes met together once and Regalado individually at other times met with various FBI agents and Assistant United States Attorneys. Regalado was debriefed on a number of matters, including his knowledge of the practice run that resulted in the assassination of four pilots shot down by Cuban MIGs in a Brothers to the Rescue mission in international airspace on February 24, 1996. The information provided by Regalado has been characterized by an Assistant United States Attorney, Wendy Jacobus, representing then the official position of the United States as significant to the United States and worthy of development. Jacobus is a prosecutor in the same office that is presently engaged in the prosecution of the Brothers to the Rescue murder conspiracy.

Adel Regalado would like to testify before this subcommittee. However, Regalado continues to cooperate with the United States. Consistent with that posture, a live appearance before Congress may jeopardize or compromise certain aspects of the government's case now in progress in the Southern District. A tough decision has

to be made by counsel. As such, the following excerpt which are notes of singular portions of Regalado's debriefing transcribed from the notes taken by counsel for Regalado at these debriefings, is submitted. These notes were previously tendered to each government agent present at the debriefing. So this is the excerpt from the notes. And this sort of tells the story.

In February 1996, 4 or 5 days before the Brothers to the Rescue incident, Regalado thought it was a normal day. He went to the airport. He thought he was headed to Guanabo airport. Regalado did not know which pilot would be leaving for Guanabo. It ended up being Adolfo Perez Pantoja and Alfredo Torres Ten, both of them. A telex came. Regalado read the telex. It was addressed to the Head of Operations. It basically read something to the effect: Take off from San Nicolas, flight number such and such to Jose Marti. Also, it stated: Subordinate to military operation such and such a number.

The three of them, Pantoja, Torres Ten, and Regalado left on the Wilga—that is a plane—sometime between 7 and 8 in the morning. They arrived at Jose Marti 25 to 30 minutes later. They landed on, he believes, ramp number 3. There were Aerotaxi planes there and also some DC-3s. There were two military personnel waiting for him. One was Comeneros, who was a Colonel or Lieutenant Colonel. He is well-known as a military supervisor of all civil airports. He is a military officer.

Regalado recognized by sight the other fellow but doesn't know his name. He was definitely a captain in the Cuban Air Force. The uniform is the same color. He had an aviator emblem. Comeneros knew Regalado from the inauguration at Guanabo.

Comeneros then told them on the ground they were going to go out and began to ask questions about radio and equipment. The others checked out the plane inside and out. They had equipment in hand, and they were placing a cable for a GPS. This was the only time he had seen a GPS, and it was a manual one. Comeneros stated they were getting to go on the Jose Marti frequency of 126. They were going to fly and transfer to Ciudad Libertad and then to Jose Marti.

Adolfo was the captain of the flight. Torres Ten was the co-pilot, and the Air Force captain went in the back. All three put on life vests and made some silly comments about the life vests.

Before the plane took off on the exercise, they were on the ground for approximately 20 to 30 minutes. Comeneros and Adel stayed around. Comeneros used the telephone to contact the tower but did not include Regalado in the conversations. The plane returned two and a half to 3 hours later. More than 2 hours, maybe close to 3 hours. When they landed there was a thumbs-up. Comeneros started talking and told them that on behalf of the Communist Party, the maximum leader and MINFAR, they were being thanked and that they would be appropriately recognized. Comeneros and the Air Force captain spoke quietly on the side. The three took off sometime around noon and flew back to Guanabo. Pantoja and Torres Ten made some general statements about having been in international waters, about the GPS and other events. They landed at Guanabo. When they landed at

Guanabo, Pantoja told them exactly everything that happened. Everything was told to him that day and then they went to work.

On February 24, the day of the downing, all flights had been cancelled by the military on the north side of Havana. Regalado called the tower, and they told them not to come to work. That night news came about the downing of the Brothers to the Rescue planes. There had been news previous to then about Brothers to the Rescue coming and dropping leaflets.

On February 25, the downing was confirmed by the general of the Air Force. Perez Perez also stated in the news that it was national territory and they had given warnings and that Brothers to the Rescue had been warned. This was seen in a program called Open Agenda around 8 p.m. That night. Perez Perez admitted in the program all that had happened.

Afterwards, Pantoja and Regalado would talk about Brothers to the Rescue. They kept dwelling on it because they had a strong suspicion that was being confirmed. Their run obviously had something to do with what happened. About 4 or 5 days after the downing of the Brothers to the Rescue plane, Comeneros came by to congratulate them. Present was the First Secretary of the Communist Party, who along with Comeneros presented a diploma to Adolfo and Alfredo Torres Ten. Regalado was present. There were about 20 people attending, including airport personnel. They received gifts which included powdered milk. Then there was somewhat of a party with a lot of drinking. Gooding Estevez was there. At that point Comeneros said that this was a practice run and that the Wilga, the plane that they used, had been used as in—on adjustment and precision run because the Wilga was the smallest plane available.

The specific details of the practice—the end of the quote—the specific details of the practice run must be omitted at this time. However, Carolyn Heck, the most competent Assistant United States Attorney handling the case in Miami, Florida, has all the details of the Regalado statement; and Regalado consents to any provision to her of any FBI 302 form to this subcommittee.

It is signed by Ralph Fernandez, Mr. Regalado's attorney.

Thank you very much, Mr. Chairman.

Mr. McCOLLUM. Thank you, Mr. Fowler, for presenting that testimony.

[The prepared statement of Mr. Regalado follows:]

PREPARED STATEMENT OF ADEL REGALADO, A RECENT CUBAN DEFECTOR

Adel Regalado was one of four occupants of a small tourist airplane that left Cuba on the morning of August 16, 1996. The plane crashed at sea approximately thirty miles off the coast of Ft. Myers, Florida. After the initial investigation was made by several law enforcement agencies Regalado and two companions were brought into the United States and paroled in anticipation of a skyjacking accusation. The pilot of the plane claimed he was forced to leave Cuba after he realized that all four would be repatriated because they had not touched U.S. soil.

The three men were indicted for air piracy and were appointed counsel to represent them before the United States District Court, in and for the Middle District of Florida. The Honorable Henry Lee Adams presided over their subsequent trial. Testimony began on July 14, 1997.

A jury was selected in the air piracy prosecution the week of July 7, 1997. Lawyers for the Respondents were Ft. Myers attorneys Ted Wolfendale, John Mills, Neill Potter and Miguel Fernandez. On July 13, 1997, a Sunday, around 9:00 P.M., with testimony beginning the very next morning at 8:10 A.M. attorney Ralph

Fernandez was consulted and agreed to help in the representation of the then criminal defendants, Regalado, Bello Puente and Reyes Ramirez. The following morning, before opening statements, Ralph Fernandez, was allowed to appear in the case and became lead counsel.

The trial proceedings concluded with the rendition of a verdict, after less than an hour of deliberations, on July 16, 1997. The three men were acquitted.

Shortly after the criminal case acquittal an Immigration retainer was placed on the three. A notice to appear was served on each of the men on July 25, 1997. The three first alerted the Immigration Court, the Honorable Richard K. McHugh presiding, of their intention to request political asylum. A formal application for asylum was filed in open court by each of them on October 17, 1997.

Contemporaneous to the Immigration prosecution Regalado, Bello Puente and Reyes met together once, and Regalado individually at other times, with various FBI agents and Assistant United States Attorneys. Regalado was debriefed on a number of matters, including his knowledge of the practice run that resulted in the assassination of four pilots shot down by Cuban MiGs in a Brothers to the Rescue mission, in international airspace on February 24, 1996. The information provided by Regalado has been characterized by an Assistant United States Attorney, Wendy Jacobs, representing the official position of the United States, as significant to the United States and worthy of development. Jacobus is a prosecutor in the same office that is presently engaged in the prosecution of the BTTR murder conspiracy.

Despite the level of cooperation in a matter so important to the security of the United States, Immigration removal proceedings continued over pleas to the contrary by counsel for the three. Regalado's cooperation was totally voluntary as he never conditioned his assistance to the United States in exchange for any benefit or any preferential treatment by any agency. After multiple pre-trial hearings, on October 19, 1998, the removal and asylum hearing began in Bradenton, Florida. After a week and a day of trial the Immigration Judge concluded the proceedings and began the preparation of the decision.

On December 15, 1998, the Honorable Richard K. McHugh, Immigration Judge, entered the Decision and Orders of the Immigration Judge. On December 24, 1998, the three men were released. The Service filed its notice of appeal and vigorously continues to pursue the removal of Regalado to Cuba where he faces execution for the provision of the testimony he has supplied the United States.

During the Immigration trial a number of matters were brought to the attention of the Immigration court which were of significance. Rather than comment on or characterize what took place, particularly in view of the seriousness of this congressional inquiry, it is best to make reference to actual transcripts. Counsel for Regalado had hammered away at the incredible scenario of the Immigration Service's relentless pursuit of removal of Regalado and his two companions to Cuba. That prompted the unusual appearance in the Immigration trial of an Assistant United States Attorney from the Southern District who argued a motion to quash testimony Regalado sought about Regalado's voluntary cooperation with the United States. AUSA Wendy Jacobus, in support of her argument to quash, stated "in light of that, your Honor, and in light of the fact that both of these agents are assigned to the *Brothers to the Rescue investigation in Miami, which is an ongoing criminal investigation that has great significance to the country . . .*" (T:701) AUSA Jacobus went on to state "I am here on behalf of the U.S. Attorney's Office to represent to you that the U.S. Attorney's Office will stipulate that Mr. Regalado . . . was debriefed by agents of the FBI, and this would be after the hijacking trial in Tampa, and that debriefing related to information regarding events surrounding the February 24, 1996 shoot down of the *Brothers to the Rescue aircraft, and the United States and the FBI consider that information relevant to an ongoing investigation and worthy of further development.*" (T:702) (emphasis added)

Later the Immigration Judge asked Ms. Jacobus if it's not accurate that it's almost a foregone conclusion that he'll be persecuted if he (Regalado) returns., (T:705) AUSA Jacobus states that "it's going to be impossible to separate the hijacking case from the government's request, which is an ongoing investigation, and the spy case, in which we have an order from Judge Leonard, and we have a lot of national security and ongoing investigations. (T:705) (emphasis added)

The Judge then engaged in an exchange with the Immigration prosecutor and AUSA Jacobus and recounted the stipulations of the government as to the BTTR issue being "a matter of national security" and "of great significance to the country" (T:761) AUSA Jacobus said she understood that she bound the government. (T:762) (emphasis added)

The Immigration Judge in his decision also accepted the representations and stipulations of the government. At page 34 of the ruling the Immigration court stated as follows:

"The Service has also stipulated during these proceedings that Respondent Regalado's debriefing related to information regarding events surrounding the February 24, 1996, shoot-down of the Brothers to the Rescue aircraft, and the United States and the FBI consider that information relevant to an ongoing investigation and worthy of further development."

Adel Regalado would like to testify before this subcommittee. However Regalado continues to cooperate with the United States. Consistent with that posture a live appearance before Congress may jeopardize or compromise certain aspects of the government's case now in progress in the Southern District. A tough decision has to be made by counsel. As such the following excerpt, which are notes of singular portions of Regalado's debriefing, transcribed from the notes taken by counsel for Regalado at these debriefings, is submitted. These notes were previously tendered to each government agent present at the debriefing as well as the prosecutors, for their comments as to accuracy. All agents present were given an opportunity to explain any inaccuracy on the notes. None expressed a position that the notes were not accurate. The notes tell a part of the story. Excerpts from the notes (as Regalado's statement to this subcommittee) follow:

"In February of 1996, four or five days before the Brothers to the Rescue incident, Regalado thought it was a normal day. He went to the airport. He thought he was headed to Guanabo Airport. Regalado did not know which pilot would be leaving for Guanabo. It ended up being Adolfo Perez Pantoja and Alfredo Torres Ten, both. A telex came from ENSA. Regalado read the Telex. It was addressed to the Head of operations. It basically read something to the effect of "take off from San Nicolas, flight number: _____ to Jose Marti." Also it stated, "Subordinate to military operation PU104.0." The three of them, Pantoja, Torres Ten, and Regalado left on the Wilga sometime between seven and eight in the morning. They arrived at Jose Marti twenty-five to thirty minutes later. They landed on, he believes, ramp number three. There were Aerotaxi planes there and also some DC3s. There were two military personnel waiting for him. One was Comeneros, who is a Colonel or Lieutenant Colonel. He is well-known as a military supervisor of all civil airports. He is a military officer.

Regalado recognized by sight the other fellow, but doesn't know his name. He was definitely a captain in the Cuban Air Force. The uniform is the same color. He had an aviator emblem. Comeneros knew Regalado from the inauguration at Guanabo.

Comeneros then told them on the ground that they were going to go out and began to ask questions about radio and equipment. The others checked out the plane inside and out. They had equipment in hand and they were placing a cable for a GPS. This was the only time he had seen a GPS, and it was a manual one. Comeneros stated that they were going to go on the Jose Marti frequency of 126. They were going to fly and transfer to Ciudad Libertad and then to Jose Marti. Adolfo was the captain of the flight. Torres Ten was the co-pilot and the Air Force captain went in the back. All three put on life vests and made some silly comments about the life vests. Before the plane took off on the exercise, they were on the ground for about twenty to thirty minutes. Comeneros and Adel stayed around. Comeneros used a telephone to contact the tower, but did not include Regalado in the conversations. The plane returned two and a half to three and a half hours later. More than two hours, maybe close to three hours. When they landed there was a thumbs up. Comeneros started talking and told them that on behalf of the Communist Party, the maximum leader, and MINFAR, they were being thanked and that they would be appropriately recognized. Comeneros and the Air Force captain spoke quietly on the side. The three took off some time around noon and flew back to Guanabo. Pantoja and Torres Ten made some general statements about having been in international waters, about the GPS and other events. They landed at Guanabo.

When they landed at Guanabo, Pantoja told them exactly what happened. Everything was told to him that day and then they went to work.

On February 24, 1996 all flights had been canceled by the military on the north side of Havana. Regalado called the tower and they told him not to come to work. That night news came out about the downing of the Brothers to the Rescue planes. There had been news previous to then about Brothers to the Rescue coming in and dropping leaflets. On February 25, the downing was confirmed by the general of the Air Force. Perez also stated in the news that it was national territory and they had given warnings and that Brothers to the Rescue had been warned. This was seen in a program called open Agenda" at around 8:00 p.m. that night. Perez admitted in the program all that had happened.

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The specific details of the practice run must be omitted at this time. However, Caroline Heck, the most competent Assistant United States Attorney handling the case in Miami, Florida, has all the details of the Regalado statement and Regalado consents to any provision by her of any FBI 302 form to this subcommittee.

Mr. MCCOLLUM. As you stated, Mr. Regalado could not be here today because of an agreement with the Justice Department, but we do have as much as we can; and, hopefully, once the conclusion of the trial that is going on down in Miami for the 14 that are indicted is over, we will be able to have a more thorough explanation.

I will yield myself 5 minutes to ask some questions.

I am very curious, if the interpreter can ask the questions here for me or the question of Mr. Betancourt Morin, in the indictments of the 14 Cubans who have been charged with the Brothers to the Rescue crimes, the Cuban intelligence directorate is repeatedly mentioned. In your experience, to the best of your knowledge, does this directorate follow Castro's orders?

Ms. SANTELICES. Could you repeat the last question, the last part?

Mr. MCCOLLUM. How closely does the Cuban intelligence directorate, to his knowledge, follow Castro's orders or do they act on their own?

If Mr. Fowler wants to help clarify that, please do.

Mr. MORIN. In all the armed force in Cuba, there is a chief in charge, a head. When there is a decision that involves the government, it is the head of the government, the one that is asked.

With regard of the intelligence, a decision that implies a political risk at an international level, all the chief could make decisions but the main decision is taken by the head of the state because the final consultation is with him and he is the one that takes the final decision.

Mr. MCCOLLUM. Thank you very, very much. We clarified something we really needed to have clarified, and I think you have done a very good job of that, Mr. Betancourt Morin.

I would like to ask Mr. Mas a question or two before my time is up.

You met, I know, with President Clinton on more than one occasion, I believe, to discuss this matter of the indictments and of the shootdown of the Brothers to the Rescue, and I have heard you in your testimony today express a great deal of frustration with the failure to indict Castro himself. Do you think that President Clinton would support an indictment against Fidel Castro from your knowledge now even if he became persuaded from all the evidence overwhelmingly pointed to his guilt?

Mr. MAS. I have met with President Clinton on three occasions to discuss the issue of the indictment. I talked to him about specifics of the case, that there exists evidence in the civil judgment, that this should be a Justice Department matter. It is my personal belief, after my meetings with President Clinton, that although he may personally feel that an indictment is adequate and correct, because I explained to him the pain of looking at the mothers of these victims' eyes and telling them as an American that there is no justice for their children, that is very difficult, I strongly feel, this is my personal opinion, that a political decision has been made by the State Department, by the National Security Council, and by the Justice Department to not pursue the indictment of Fidel Castro because they do not want a confrontation with the dictator.

Mr. MCCOLLUM. In your opinion, how important is obtaining an indictment of Castro? How important is that to our country, to the United States, not just to the people affected?

Mr. MAS. I believe it is important to history. I believe that we have an obligation as leaders of the free world. I think that we in the Cuban exile community that live in freedom have a responsibility to history and to those victims in Cuba to paint Fidel Castro as the criminal that he is.

As we see now the globalization of how dictators are treated, how Milosevic is indicted in The Hague in the War Crimes Tribunal as the first sitting head of state to be indicted, as we have seen how we have pursued bin Laden, who murdered Americans by bombing the embassies; and my question is, what difference is there between those victims and those four innocent victims in international waters? Is the blood of our Cuban American brothers worth any less than any other American citizen?

I feel not only do we have a responsibility to history, but I think it is in the interest and the national security interest of the United States of America to do justice in this case. I believe that an indictment of Fidel Castro will lead us closer to the freedom, democracy and liberty in Cuba that we want. I think it sends a message to the ironic community that Fidel Castro is a pariah. I think it is ironic that the policy that has been chosen by this Administration now, even contradicts with Castro's traditional allies, those who want to qualify themselves as the intellectual left and who for the first time are now criticizing Castro, calling him a terrorist, especially in France where on the front page of *Le Monde* they note his links to Carlos the Jackal. When we see the Spanish newspapers continually citing Cuba's drug trafficking and others. I think that we have a responsibility to history but a responsibility to those victims in Cuba; and I believe that an indictment will serve not only the best interests of the United States but the interest of all the victims of Castro's tyranny.

Mr. MCCOLLUM. Last question. Do you think Castro is worried about getting indicted?

Mr. MAS. I think he is extremely worried about getting indicted. I would like to note that he cut short his trip to Spain after the Pinochet indictment. After Lazaro Betancourt Morin defected to the Dominican Republic, it did not take Fidel Castro 22 minutes to be on an airplane back to Cuba. He has testified today that his worry is the efforts of the Cuban American National Foundation and oth-

ers to indict Fidel Castro for these murders, that an arrest warrant will be issued for him outside of Cuba, and he is very fearful of that.

I would like to note that in the last trip to Brazil he had over 700 security personnel accompany him so, yes, he is extremely worried about an indictment.

Mr. MCCOLLUM. Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman, and I yield to the gentlelady from Florida.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Scott, for the time; and thank you, Mr. Chairman. Thank you for the excellent testimony.

Mr. MAS, I had some follow-up questions on the chairman's questions regarding your meetings with the President. But first I wanted to ask you that some say that without the administration calling this callous murderous act on February 24, 1996, as an act of terrorism, then the terrorism statute cannot be invoked. In your opinion, is the fact that the administration is so unwilling to call it a terrorist act, nor has it ever used such word, an indication of the administration's premeditation not to indict anyone and not to proceed expeditiously on this matter of the indictments?

Mr. MAS. I believe that is the case. When I cite today the fact that he made the comment publicly that it was an illegal act, I think there is progress on that front, but I strongly feel and I will repeat what I said before the decision not to indict has been a political decision. That is a decision that is not right and not in accordance with what the United States of America stands for especially when it comes to the victims of oppression and I strongly feel that the Congress of the United States with the bipartisan support that U.S.-Cuba policy has always had needs to continue pushing for the indictment, that this should be an issue of the Justice Department and not political decision. So I am extremely frustrated at the reluctance of this Administration to let the justice system take its course.

Ms. ROS-LEHTINEN. Following up on that, you correctly quote from Judge King's ruling that says the executive branch's approach to this situation has been inconsistent at best. It now apparently believes that shielding a terrorist foreign state's assets is more important than compensating for the loss of American lives.

In your meetings various times with the President, did he make any commitments regarding the indictments when the implementation of section 117, which as we know has been important—is the administration going to continue to waive this provision which, as we know, allows the execution of U.S. Judgment against terrorist states? Did he make any commitment about including Castro in this indictment and did he provide any explanations for the lack of response by his administration to the Brothers to the Rescue shootdowns?

Mr. MAS. He made no commitments, although he expressed a frustration with not being able during his term to rid this hemisphere of this last dictator. But, as I told him, there needs to be a will to eliminate the last dictator in this hemisphere and that we need to have the resolve and the backbone to go after Fidel Castro.

And I strongly feel that this indictment will serve the purposes of freedom and liberty.

As to this point there has been no commitment from the President of the United States. I think there has been no other comments either publicly or privately as to the indictment issue, and I think it is our responsibility and it has been my responsibility when I have met with him to bring about the facts, to tell him the importance of this and that justice may be served. But, unfortunately, the policy that the administration has chosen to pursue is one that is not in the best interest of freedom and democracy for Cuba at this time.

Ms. ROS-LEHTINEN. One last question—I thank Mr. Chairman and Mr. Scott for the time. On the issue whether something can happen in the island of Cuba without Castro's direct participation in it, you point out in your testimony in one of the operations it says it is simply inconceivable that such an elaborate and lethal conspiracy was not authorized and approved by Fidel Castro himself, and not only does this apply to the Brothers to the Rescue shootdown but in drug trafficking and money laundering and many of the other illegal activities taking place in Cuba. And now, as you pointed out in your testimony, we have the issue of what are incorrectly called now illegal economic immigrants, rather than the political refugees that they are. Do you believe that it is possible for anyone to be involved in an alien smuggling operation to the degree that many say is taking place in Cuba now without the participation of Fidel Castro?

Mr. MAS. No, it is not. As he heads this vast criminal enterprise, the Cuban government is profiting on the plight of these poor refugees, and we understand that the per head cost now going to the Cuban government is in excess of—their portion is \$10,000 per person per refugee taken to sea.

Ms. ROS-LEHTINEN. Thank you. Of course, we always are saying that, just as you point out, the errand boys are always the ones who are getting in trouble when we know that it is Fidel Castro himself giving the orders in these and many other sad tragedies. Thank you, Mr. Mas, for your testimony.

Mr. MCCOLLUM. Thank you, Ms. Ros-Lehtinen.

Mr. Rothman, you are recognized.

Mr. ROTHMAN. Thank you, Mr. Chairman.

Mr. Mas, good to see you again, and Mr. Betancourt Morin. I want to thank you both for appearing before the panel.

First, Mr. Mas, I—your remarks were very powerful with regard to the nature of the Castro regime as it being less a government and more of a criminal enterprise involving murder and extortion, drug trafficking, harboring fugitives from American justice and being responsible for the killing of American citizens in international waters.

I would make this observation from both panels. It appears to me that probable cause has clearly been shown for the indictment of Fidel Castro; and given Castro's own words as recorded by Time magazine as well as the testimony presented today, it is incomprehensible that Mr. Castro would not be indicted. That doesn't mean that in a court of law he couldn't offer his defenses and it would be upon the prosecution to bear the burden of proof, but certainly

the threshold for his indictment has clearly been met. I want to thank you for bringing this information to us, and that we will use our best efforts and the power that we have as elected representatives to convey our views on this to the judicial and law enforcement authorities who have the ultimate responsibility. But I did want to thank you for your indispensable role, and I wanted to thank Mr. Morin for coming forth as well as I wish you good luck, sir.

Mr. McCOLLUM. Thank you very much, Mr. Rothman.

As we conclude this hearing I want to be sure everybody appreciates the magnitude of the testimony today from Mr. Regalado, who is not here today, that Mr. Fowler produced and Mr. Betancourt Morin, who is here today. Because what I heard and I believe every member of this panel heard is that Mr. Regalado described through his written testimony presented to us training that was done in preparation for the shootdown. So it is not as though with that testimony we don't have proof that Castro and his regime were plotting and planning. This was organized. This isn't something that just happened by some accident because a couple of fellows went up with MIGs and decided to get gun happy.

We also had testimony from the Customs' witness that there was a situation where the MIGs just didn't go up. Mr. Houlihan had been a radar operator for 2 years. He didn't see that. This sort of thing just didn't happen.

Then we had your testimony. We are very pleased you came, Mr. Morin, at some degree of stress to you, we know, describing from your perspective having been one of the persons who most closely guarded Fidel Castro before you came to this country, of how tightly controlled the directorate of intelligence and the operations like this were by Castro himself and how it just isn't conceivable, given the pattern and practice of this Cuban government, that Castro did not himself direct the operations and know that these planes were going to be shot down. And then we had the admission on top of that that Castro made in Time magazine.

So I want to thank all of you for coming today. I think this hearing clearly demonstrates that, for whatever reason, this administration has chosen not to indict Fidel Castro when it indicted the other 14 Cubans in this criminal conspiracy, and there is absolutely no legal excuse not to do so, and whatever political reason it is just strikes me as an extraordinarily bad precedent and policy for this country and for the world, especially a Nation that stands for freedom in such a strong way as ours does, and I hope this hearing will bring some degree of pressure on the Administration to reconsider that decision.

I want to recognize particularly the courage and commitment of this witness, Mr. Betancourt Morin, for coming. I really appreciate it. I know it was courageous for you to be here today, I really do. And I want to again express the unity we all have in our commitment to liberty and thank each of you for being here today. It has been a very, very fruitful hearing. The committee will, as I told Mr. Basulto earlier, pursue this more thoroughly once we have the freedom to do so when the trial has taken place of the 14 Cubans. Thank you very much.

The hearing of the subcommittee is adjourned.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



U.S. Department of Justice
Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530
November 17, 1998

The Honorable Lincoln Diaz-Balart
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Diaz-Balart:

The August 31, 1998, letter that you and Congresswoman Ileana Ros-Lehtinen jointly wrote to Attorney General Reno has been transmitted to this Office for response. Your letter forwarded questions posed by Jose Basulto, president of Brothers to the Rescue ("BTR") concerning the February 24, 1996, downing of two BTR aircraft by the Cuban military.

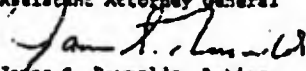
We have carefully reviewed Mr. Basulto's questions and have determined that they relate to the actions of agencies under the jurisdiction of the Department of Defense. Questions 1 and 2 ask why the "Clinton administration" did not inform BTR of conversations Mr. Basulto believes took place between U.S. and Cuban military officials concerning BTR's incursions into Cuban airspace. The remaining questions, 3-7, all relate to actions taken by the Air Force just prior to the downing of the BTR planes and information about military terms and procedures.

In 1996, the Office of the Inspector General for the Defense Department was asked by Congress to examine many of the issues that are presented by Mr. Basulto's letter. Consequently, we have forwarded a copy of your letter to the Department of Defense Inspector General.

Please do not hesitate to contact us if we can be of further assistance in regard to this or any other matter.

Sincerely,

James K. Robinson
Assistant Attorney General


James S. Reynolds, Acting
Deputy Assistant Attorney General

Office of the Assistant Attorney General

Washington, D.C. 20541
November 17, 1998The Honorable Ileana Ros-Lehtinen
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Ros-Lehtinen:

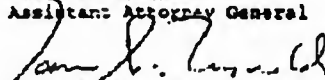
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James K. Robinson
Assistant Attorney General

James S. Reynolds, Acting
Deputy Assistant Attorney General

Congress of the United States
Washington, DC 20515

August 31, 1998

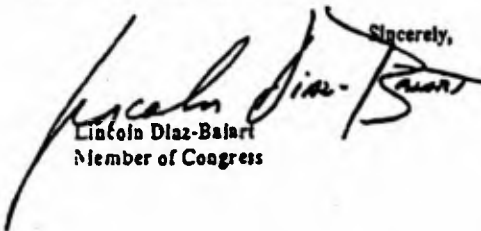
The Honorable Janet Reno
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Room 4545
Washington, DC 20530-0001

Dear Madame Attorney General:

We were recently contacted by Mr. Jose Basulto regarding the shootdown of the Brothers to the Rescue (BTTR) planes on February 24, 1996.

We are enclosing certain questions and a related dossier on the shootdown of the two BTTR airplanes that still remain unanswered.

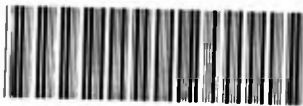
We respectfully ask you to please answer these questions that pertain to agencies under your jurisdiction.


 Lincoln Diaz-Balart
 Member of Congress

Sincerely,

 Ilkka Räs-Lehtinen
 Member of Congress

cc: **Mr. Jose Basulto**
P.O. Box 430846
Miami, FL 33243-0846



0 006 856 389 6

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THE CUBAN AMERICAN
NATIONAL FOUNDATION,
New Orleans, LA, July 6, 1999.

DAN BRYANT, *General Counsel,*
Office of Chief Counsel,
House of Representatives, Washington, DC.

Re: Indictment against Fidel Castro for the Murder of 3 U.S.
citizens over international waters

DEAR DAN: I am sorry I missed your call today, I called twice since. Further to my letter of June 30th, I have made arrangements to have Lazaro Betancourt Morin appear as a witness at the hearing. He is Castro's latest defector (he defected a few weeks ago) and was a member of his security staff.

In addition, we will have Silvia Iriondo and Arnaldo Iglesias, both of whom were aboard the plane that survived. Ms. Iriondo can be reached at the following numbers: 305-934-7302 (office).

I have not yet been able to contact Professor Blakesley, but will expect to do so shortly.

Please let me know as soon as possible the precise time and place of the hearing. Many of the witnesses plan to fly in the early morning flight of, July 15' and leave that night, if possible. With best regards, I remain

Very Truly yours,

GEORGE J. FOWLER III, *General Counsel*

cc:

Mr. Jorge Mas Santos
Mr. Francisco "Pepe" Hernandez
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